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A PROGRAM FOR RESEARCH IN POLITICAL SCIENCE*

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I

There are probably few members of the learned professions who do not feel the urge to contribute, if they can, to the existing store of knowledge regarding their chosen field, or, more ambitious still, to advance yet further that body of thought constituting the fundamental principles by which it is sought to interpret the data dealt with, to trace relationships between cause and effect, to distinguish the essential from the non-essential, to evaluate action by results—in a word, to give philosophic coherence to what would otherwise be disconnected and unrelated thinking.

In the case of many, this urge is supplemented by a positive obligation. Those holding academic positions calling for the direction of students engaged in advanced or postgraduate work, and those at the head of institutions of research, not only have the desire themselves to engage in work of original research, but are under the responsibility of encouraging, if not compelling, work of a like character by others.

Undoubtedly the most important aspect of this responsibility is the determination of the direction that it is most desirable that such research work should take. Though there are notable exceptions, this determination, as a general rule, can best be made by those who have long worked in the field, who, by practical experience, have had brought home to them the *lacunæ* in the knowledge regarding the facts and forces operating in fields in which they are engaged, and who have reached a certain maturity of judgment.

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All who fall in any way in this category have, it is believed, been impressed with the fact that, while they had in mind scores of matters which they believed of importance to be made subjects of inquiry, and which they themselves would like to undertake were it practicable for them to do so, those just beginning their careers, and keenly anxious to engage in work of a research character, were at a loss as to the selection of topics to which to address their efforts. This condition of affairs gives rise to a real obligation on the part of the older to the younger generation. As one who is rapidly approaching, if he has not already reached, the period when his own work will slow down and before long cease, and who for years has had the responsibility of directing research work in political science, I feel that one of the greatest contributions now open to serve the cause to which I have devoted so much of my effort is to survey the field in which I have worked and to seek to make known, not only the general direction which, in my opinion, research in political science in the United States can most profitably take, but, within the limitations of time at my disposal, to indicate the specific topics of inquiry that it is thought desirable to have exploited and the reasons for so thinking. And such an undertaking would seem to be peculiarly appropriate to the circumstances under which the present address has been prepared and is now being delivered.

II

In a report which I have prepared for the subcommittee on research of the Committee on Policy of the American Political Science Association, I have listed some eighty-odd distinct titles of studies in the field of political science that in my opinion it is desirable to have made. In this address, I can do little more than select from this list, for special consideration, those that are deemed to be of the most importance, at least from the standpoint of their broad appeal to the general student.

In entering upon this task, the desirable method would seem to be that of proceeding from the general to the particular. At the forefront of my program I have therefore placed two studies that are world-wide in their significance, viz.:

1. *Popular Government: A Reëxamination of Its Philosophy and Its Practical Operation in the United States*
2. *The Government of Backward Peoples: Some Fundamental Considerations*

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Priority has been given to the first of these subjects for a number of reasons.

In the first place, it is believed that there is a real need for a reëxamination, in the light of modern thought and recent happenings, of the basic philosophy, or fundamental premises, underlying the acceptance by the United States of this form of government. It is a matter of significance that so many countries should in recent years have reversed a tendency that has been at work for several generations; that, after progressively modifying their political systems in the direction of the vesting of larger and larger political powers in the hands of the people, they should suddenly return to the principle of autocracy, and, in doing so, base their action not merely upon the necessity of resorting to unusual measures for meeting an emergency, but upon a flat denial of the validity of the arguments which had theretofore been accepted as justifying popular sovereignty. The action by these states has, in a way, put the doctrine of popular government upon the defensive.

Secondly, even had these events not taken place, a reëxamination of this doctrine would not be out of order. Popular government, in the United States at least, took its rise at a time when there was an almost unquestioned belief in the doctrine of natural law and natural rights. Government by the people was held to be not merely the form of organization that would best achieve the ends of political action, but the only form that had moral and philosophic justification. There are few students of politics and jurisprudence who now hold to this doctrine. This being so, popular government, if it is to be justified, must be justified by its results.

In no other country, with the possible exception of England, has there been such a general and long-continued test of this form of government as in the United States. This experience, notwithstanding the fact that it has been had under exceptionally favorable circumstances, has developed certain weaknesses which, if anything, tend to become more pronounced as time goes on. Among these are: the tendency of the voters, a majority of whom pay little or nothing in the form of direct taxes, to demand or approve the reckless incurrence of debt and extravagance in the expenditure of public funds; of minorities to make illegitimate use of their power, as is now being done by the veterans of the late war in their demands upon the public treasury; of *blocs* in our legislative bodies

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to put special or class interests above those of the general welfare. To these may be added the difficulty encountered in making popular government a reality, instead of merely a name, in the sense of preventing real political powers from becoming vested in self-seeking, and often corrupt, political rings, and in devising the ways and means by which the constantly increasing, varied, and technical work of government may be efficiently and economically performed.

These weaknesses, moreover, are not ones peculiar to popular government as operated in the United States. If one has any doubt on this subject, he should read the really notable article, "Democracy: A Realist View," contributed to the *Atlantic Monthly* for April, 1928, by Claud Mullins, in which he surveys the working of popular government in England. He writes:

> True democracy presupposes two conditions: first, that the vast majority of the people have a genuine opinion upon public affairs; secondly, that electors will use their power for the public benefit. As regards England, I feel certain that neither condition is yet fulfilled. . . . Electoral appeals now are nearly always to the pocket and not to the conscience. We have reduced ourselves to a condition in which the mass of the voters is mainly concerned in extracting personal benefits from the public purse, and in which those who pay taxes directly have but an insignificant voice at public elections. Our politics are becoming a gigantic conspiracy to make the rich poorer, in the fond belief that thus the poor will become richer. All political parties vie with each other in offering bribes to the electors out of public funds.

In considering this matter, one should also reread the famous letter written by Macaulay in 1857 to an American friend in which he sought to set forth the impossibility of the American system of popular government proving a success for more than a limited period for the same reasons given in the quotation just reproduced; also the report made to the Institute International de Droit Public in 1928 by Joseph Barthélemy on "La Crise de la Démocratie Representative."

It is far from my intention to make an attack upon popular government. All that I seek to do is emphasize the fact that, notwithstanding the amount that has been written on this subject, the need has again risen for a study, or studies, that will deal with the validity of the principles underlying popular government; will seek to determine the extent to which the weaknesses of which this form of government has given evidence are inherent in the system, or mere failures properly to meet the conditions of its operation; and

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the action required in order to correct or remove such weaknesses. Such a study is peculiarly one to be made by the American student who is sympathetic with the system and has a long experience with its workings to draw upon.

In suggesting the second subject—The Government of Backward Peoples: Some Fundamental Considerations—I have in mind the making of a study of a rather special character. It is the tendency of students of political science to relate their thinking primarily, if not exclusively, to conditions as they exist in the more advanced and politically developed communities. Viewed from the world, rather than a narrow nationalistic, standpoint, one of the most important tasks confronting political scientists and statesmen is that of working out the problems involved in making provision for the orderly and efficient conduct of the political affairs of communities which either have never had independent governments of their own and are now in a condition of political tutelage, or, having achieved independence, have not succeeded in organizing and operating governmental systems of the standard, as regards the maintenance of order, the protection of rights, the observance of financial obligations, and the promotion of the general welfare of their citizens, that is maintained, at least measurably, by the more advanced nations.

That this task presents phases and problems of a special character must be evident. It happens that while serving, first as treasurer and later as secretary and president of the executive council of Porto Rico, during the period immediately following the establishment of civil government in that island, and still later as political adviser to the Chinese government, I had some experience in handling problems presented in the conduct of governmental affairs in a community of this character. This experience, and my subsequent studies, have impressed me with the fact that much of the writing upon the government of colonies, dependencies, and backward communities has been inconclusive, due to the fact that adequate consideration has not been given to the fundamental principles involved. Especially is this true of the consideration that has been, and is now being, given to the response to be made to the demands by the people of the Philippine Islands and Porto Rico for political independence, to the similar demands upon Great Britain made by the inhabitants of India, to the justification of intervention by one power in the conduct of governmental affairs of

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another as illustrated by the intervention of the United States in the affairs of Haiti, Santo Domingo, and Nicaragua, and of Japan in the affairs of China.

All of these cases involve matters of principle as well as of expediency. No intelligent opinion can be formulated regarding the action that should be taken, or in respect of the justification of action had, except upon the acceptance or rejection of certain fundamental premises. These include such questions as the philosophical justification of the right of self-determination and the limitations, if any, that should exist in respect to its grant or exercise; the extent to which the so-called right of self-government may be deemed to be a natural, inherent, or moral right, or is one to be respected only under certain conditions, such as that reasonable grounds exist for believing that it will be exercised with a reasonable degree of wisdom; the criteria to be employed in determining what is self-government, and especially whether self-government can be said to be granted when there is a certainty, or a high degree of probability, that political powers will in fact be exercised by a small minority only of the population making politics, as it were, a profession; whether, as more than one student of public affairs has declared, self-government, no matter how bad, is preferable to political dependency, no matter how good the government characterizing it; whether the ultimate goal of good government can best be achieved by a people profiting from their own errors, under a régime of self-government that is sure to be abused at the outset, or under a régime of tutelage, under which control, as regards important matters at least, is vested in, and exercised by, another government; which of the two considerations—the interests of the people of a particular community, or those of a community of peoples, or of the world as a whole—should prevail when the two are in conflict.

III

From these two studies, which deal with matters of world-wide politics, I have next turned to those that are of special concern to our own country. Due regard to relative, as distinguished from absolute, importance has suggested that attention should first be given to those features of our political system that are fundamental in the sense of determining its essential character: the guaranty by express provisions of our written constitution of cer-

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tain so-called individual rights; our federal, as opposed to the unitary, type of government; and our adherence to the doctrine of the separation of powers.

The decision to incorporate these basic principles into our political system was made when conditions, governmental and otherwise, were radically different from those now obtaining. Their adoption represented in a very real sense an experiment in government. Nearly a century and a half has elapsed since then, and the United States, in common with the world, has undergone revolutionary changes. The time, it is believed, has arrived when it is desirable to submit all three of these features to a reëxamination for the purpose of determining the manner in which they have actually worked in practice, and whether the experience had, and the changed conditions now existing, are such as to suggest any modification in, or departure from, them.

For the studies corresponding to these features, the following titles have been suggested:

3. *Our Constitutional Guarantees in the Light of Modern Conditions*
4. *Our Federal Form of Government in the Light of Modern Conditions*
5. *The Separation of Powers: A Reëxamination of an Old Question in the Light of Modern Conditions*

A few words further regarding the need for such studies and the general direction that they should take.

The prime purpose of the so-called guarantees in our constitutional documents is the limitation of the powers of government in respect to the control of individual action. These limitations were incorporated in our constitutions at a time when possible tyranny was the great evil to be guarded against; and the prevailing belief was that that government was best that governed least. Present conditions are radically different. The American people are now subject to a government all branches of which are, in the final analysis, subject to their control. The old idea that there were certain so-called essential functions of government, beyond which it was not desirable for governments to go, has been replaced by one which looks upon government as an agency to take positive action wherever it can effectively do so in the interest of the general welfare. In attempting to meet these new responsibilities, our governments have found their powers of action seriously restricted by

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the limitations imposed upon them by these constitutional guarantees. Particularly is this so in respect of those guarantees which relate to property rights. Much of the legislation having for its purpose to accomplish social reform that has been enacted in response to overwhelming public demand has had to run the gauntlet of the courts, and, in not a few cases, has been nullified. And much legislation desired by the people has not been even attempted, as the result of the certainty that it would not pass judicial scrutiny. Intended for the protection of the people, these guarantees have become, to a certain extent, the means of defeating the will of the people. It is in view of these conditions that it is suggested that this whole subject of constitutional guarantees should be subjected to reëxamination. Such an examination not only should consider the substantive character of these guarantees, but should distinguish between those which should be limitations upon the executive and those which should be limitations upon the government as a whole. This is of importance, since, in most foreign governments, these limitations are either non-existent or effective only as against the executive, express power being granted to the legislature to determine their scope or to modify them as, in its opinion, is deemed desirable. Another feature deserving special attention is the extent to which, if at all, such guarantees should be subject to modification or suspension in times of stress resulting from war or otherwise.

In respect to the next study suggested, it is a significant fact that practically all countries which have in recent years adopted new constitutional systems have, after a careful study of the relative advantages and disadvantages of the unitary and federal types of government, decided in favor of the former. The difficulties that our country has had, as the result of its having a federal form of government, in the handling of such matters as the detection and prosecution of crime, the control of transportation, the securing of uniform legislation in respect to many matters in regard to which uniformity is desirable, and the coördination of the activities of the national government and the governments of the states when their operations are in the same field, are well known.

At the time that our government was established, there were relatively few matters that could not be satisfactorily handled by the constituent states, acting independently. Improved means of communication and other economic changes have steadily tended to

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make matters which formerly were of local concern ones that can be effectively handled only by centralized action. The disadvantages inherent in the federal form of government have thus tended steadily to become more accentuated.

It may well be that the American people are not prepared to abandon their federal form of government. It is desirable, however, that they should have a clear knowledge of the disadvantages that this form of government presents. A dispassionate study is needed of the manner in which this form of government operates at the present time and of the means that have been resorted to to overcome its disadvantages. Such a study would be especially valuable in considering proposals constantly being made to amend the federal Constitution with a view to enlarging the powers of the national government, and in the further development of means for securing uniformity in legislation and coördination in the administrative work of the different governments where such uniformity and coördination are desirable.

An even stronger case can, it is believed, be made out for the need of a thorough reëxamination of the doctrine of the separation of powers which constitutes such an important feature of our political system. Such a study should embrace an examination of this doctrine from the theoretical standpoint as well as from that of the manner in which it has worked, and is now working, in the United States. This is desirable since, notwithstanding the attention that has been given to the subject over a long period of years, not a little confusion of thought in regard to it still exists, even among those who follow political science as a profession. In some degree, this confusion was pointed out by the writer of the present paper in the little book published by him some thirteen years ago entitled *An Introduction to the Study of the Government of Modern States*. He there pointed out that, notwithstanding the fact that the three-fold division of governmental powers into the legislative, the executive, and the judicial had received such general recognition as to give to it almost the character of a political verity, such a division could neither stand the test of scientific analysis nor be made the basis for any effective distribution of powers in a working government. Its inadequacy lay in its failure to make any provision for the electoral function, or to distinguish between the executive and the administrative function. In the second place, he drew attention to the distinction, which up to that time had received little

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or no attention, between the separation of powers which is secured when the exercise of the several powers is vested in distinct organs, each of which is manned by a distinct set of officials, and that resulting where use is made of separate organs but these organs are, in part at least, in charge of the same persons. The first may be designated as a personal and the second as an organic separation of powers. The failure to make this distinction, and to appreciate the consequences flowing from it, more than anything else, is responsible for the vast amount of misconception that exists in respect to the relative merits of the two systems.

Much the most important need for a study of this subject consists, however, in the desirability of determining, as a matter of fact, how the system of separation of powers, as embedded in our federal and state constitutions, has worked in practice; whether it has or has not achieved the ends motivating its adoption; whether it has brought with it collateral results, such as the diffusion of responsibility, the interposition of obstacles in the way of the development of effective leadership, or other consequences, that might raise the question of the desirability of its abandonment or material modification.

IV

The foregoing five suggested studies may be of a more ambitious character than many would like to undertake. Where this is so, certain phases of them may be selected for a more specialized and intensive examination. Separate studies might thus be made of each of the several constitutional guarantees, or of each of the several categories into which such guarantees may be classified, such as those having to do with purely personal liberties, those having for their purpose the protection of property rights, those throwing safeguards around judicial procedure, and the like. As regards the last subject mentioned—the separation of powers—there are three special matters of practical importance that it would be of great value to have made the subject of inquiry. These, with the titles that might be given to them, are:

6. *Administration and the Legislature: A Study in the Separation of Powers*
7. *Administration and the Courts: A Study in the Separation of Powers*
8. *Administrative Law and Its Enforcement*

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All studies in the problems of public administration must start with a recognition that the source of all administrative authority is the legislature. The legislature is the organ that determines what the government shall do, what the organization by which the activities decided upon shall be performed, how this organization shall be manned, the rules of procedure to be followed, and the money that shall be made available for meeting the expenditures involved. In reaching these determinations, the legislature acts, in effect, as the board of directors of the government corporation. One of the most important considerations involved in the whole conduct of the administrative affairs of a government is that of the extent to which the legislature, in acting in this capacity, will seek by statutory enactment to regulate in detail the organization, activities, procedure, and expenditure of funds by the several administrative services, or will leave with the administration broad discretionary powers in respect to these matters. There is a real need for a philosophical consideration of this subject, combined with a comparative study of the actual policies pursued by different governments, in Europe as well as the United States, and their results. The struggle that has just taken place between the Congress and the President in respect to which branch should undertake the reorganization of the administrative departments and independent establishments, with a view to reducing expenditures and increasing efficiency, is an illustration of the need for an inquiry of this character. A somewhat similar issue is presented in respect to the relative parts to be played by the administration and the courts in reaching final decision regarding matters of controversy arising in the conduct of governmental affairs.

One of the most striking developments of recent years in the field of politics has been the growth of what the student of jurisprudence designates as administrative law; that is, law embodied in administrative orders and regulations rather than legislative enactments, and the vesting of the adjudication of controversies arising in connection with the application of these orders, and, indeed a considerable body of statutory law as well, in officers or tribunals other than the regular courts of law. This development gives rise to a sharp conflict between those who are interested primarily in the protection and enforcement of individual rights and those whose primary concern is the efficient dispatch of public business. By the lawyer, who represents the first class, the growth

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of this vast body of law, and the instrumentalities which have been set up for its enunciation and application, are deemed to be fraught with dangerous possibilities. To those concerned with the practical operations of government, this new development offers the most effective, if not the only feasible, method for the efficient conduct of public affairs.

The harmonizing of these two conflicting interests constitutes a problem of the first magnitude. There is urgent need for an examination of the whole philosophy or principle underlying this practice, and of the practical provisions that should be made for ensuring that these powers, which are of a quasi-legislative or quasi-judicial character, are properly exercised. An essential feature of such a study should be a contrasting of the system of orders in council of the English government, and the system of administrative courts distinct from the ordinary courts that obtains in France, Germany, and other countries of continental Europe, with the system that obtains in the United States.

V

The subjects of inquiry that have just been mentioned fall in the field of what may be termed the functional distribution of powers. Scarcely less important problems are present in respect to the distribution of powers territorially. The government of a country, properly viewed, consists of the totality of agencies, national, provincial, state, or local, made use of for the conduct of public affairs. One of the most important features of a government, and one materially affecting its cost, is the manner in which the territory to be ruled over is divided into political divisions and a distribution of political powers made among them. No one can study the government of the United States without reaching the conclusion that this problem of the distribution of governmental functions territorially has not been solved satisfactorily. No systematic plan or principle has been followed in making this distribution. The primary division of the country into states has been almost wholly a matter of historical accident. The same is true of the division of the states into counties. Only as a result of accident do these divisions correspond to geographical or economic conditions; and there is the widest variation among them as regards area and population. The relation between cities and the counties in which they are located is, in most cases, one of confusion. No satisfactory

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provision exists for the handling of the common interests of metropolitan areas. There is a multiplicity of special areas such as school districts, irrigation districts, and the like. On no rational grounds, as regards meeting local needs or efficiency in operation, can the existence of states of the disproportionate size and population of Texas and Rhode Island, New York and Nevada, nor the existence within the same state of counties some of which have ten times the area or population of others, be justified.

A complete exploration of this field would require a multiplicity of studies. Mention here, however, is made of but three which, on account of their general character, have a special importance. These are:

9. *Political Divisions of the United States: A Study of the Territorial Distribution of Powers*
10. *The Coördination of the Administrative Organization and Work of the National and State Governments*
11. *The Coördination of the Administrative Organization and Work of the State Governments and Their Political Subdivisions*

In respect to the first of these, it is recognized that, for sentimental reasons, great difficulty will be encountered in making any change in existing political boundaries. It is none the less desirable that this whole problem should be subjected to careful study, to the end that the people may at least know the disadvantages and cost that their illogical system entails, and the lines along which action should proceed in bringing about improvement. In point of fact, a great movement has been at work during recent years for the modification of this system. Beginning at the bottom, students of government and those responsible for the prosecution of special surveys in the field of state and local government have united in recommending the abolition of many, if not most, of the political subdivisions of the county and the making of the county the smallest general territorial unit for the administration of public affairs. From this point, the movement has extended to that of raising the question whether the number of counties should not be greatly reduced, through a process of consolidation, and even whether the time has not arrived when we should look forward to—using the expression employed by me in the report made by the Institute for Government Research, of which I was the director, on county government in North Carolina—the progressive liquidation of the

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county and its final abolition as a political subdivision of the state. The study suggested is thus one of peculiar interest and timeliness, both as a contribution to the principles involved, and as a survey of a movement now under way.

The need for the second study mentioned is due to the fact that our federal form of government gives rise to certain problems which either are not present or can more readily be met in a unitary government such as that of England or France. Among these, the most important is that of coördination of the administrative work of the central government with that of the constituent states. This problem would not arise were the fields of activities of the two governments distinct. This condition, however, does not obtain in the United States. Both the national and state governments to a large extent engage in work in the same fields and having the same general purposes in view. Both seek to promote education, public health, agriculture, fishing, mining, and industry generally. Both undertake to control transportation and banking. Both have before them the problem of the regulation of power companies. Even in respect to such an important function as that of national defense, both are concerned. Both to an increasing extent recognize the desirability of promoting, or themselves engaging in, scientific research.

This joint occupancy of the same fields of endeavor raises in an acute form the problem of the means by which effective coöperation between the two classes of governments may be secured and unnecessary duplication and work avoided. Almost without exception, federal agencies have sought, in one way or another, to establish coöperative relations with state agencies engaged in the same lines of work. The system under which the national government makes grants of money to the states for certain work, provided the latter make corresponding appropriations and observe certain conditions, is but one phase of this effort. If this system were abolished, the problem of securing coöperation between the national government and the states would remain, and efforts in this direction would have to take other forms. Though, as stated, much has been, and is being, done to meet this problem, much yet remains to be done to put conditions upon a satisfactory basis. Illustrating possibilities in this way is the proposal that the state railroad commissions be made, in effect, the tribunals of original jurisdiction in respect to most matters coming before the Inter-

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state Commerce Commission, and the latter function as an appellate tribunal, while retaining its original jurisdiction in respect to certain matters of national importance.

The problem of the coördination of the organization and work of the state governments and their political subdivisions is analogous to that of the coördination of federal and state organization and activities, but presents itself under different conditions owing to the fact that the state government is, as regards its relations to its political subdivisions, a unitary government and, as such, can determine both its own organization and activities and those of its political subdivisions as well. It is thus in a position to give orders to, and to exercise the function of supervision and control over, the latter, a power not possessed by the national government in respect to the states. The essence of the study here suggested is thus that of determining what principles, if any, should govern the states in apportioning the field between their own distinct agencies and their political subdivisions; in providing for the correlation of the latters' organization and work with their own, so as to ensure a unity of program and a minimum of duplication or conflict of jurisdiction and responsibilities; in distinguishing the extent to, and manner in, which they shall direct, supervise, and control their political subdivisions in the performance of their administrative activities; and of setting forth the conditions actually obtaining in the several states in respect to these important matters.

VI

Before leaving this subject of the study of government from a functional standpoint, it is desired to mention yet another study which is believed to be of surpassing importance, from the standpoint of both theory and practice. The title suggested for this study is:

12. The Doctrine of Industries Affected with a Public Interest: A Political and Legal Study

There is, of course, now in existence a vast body of literature bearing upon the jurisprudence of this question. What is urgently needed is a study that will have as its primary objective, not merely a statement of the law as it exists, but the law, or practice, that it is in the interest of society to have formulated by the legislatures and applied by the courts. As is well known, one of the present problems of jurisprudence is to keep the law in adjustment to

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changing conditions. At the time that the American doctrine of industries affected with a public interest took form, conditions were radically different from those now obtaining. There are many features of our social and economic life which formerly were matters of purely individual concern, but which now are ones affecting the general interest of the entire community in a very vital way, and only possible of effective handling on the basis of the general, as distinguished from the individual, interest. This conflict between the interest of the individual and the general community may be illustrated by the situation now existing in respect to the conservation of the natural resources of the country. It is undoubtedly to the interest, in many cases, of the individual owner of forest land entirely to denude such land of its growing timber and to make no provision for protection against fire hazards through the disposal of the slash. From the standpoint of society, however, it may be, and usually is, of the utmost importance that the owner, in cutting his timber, shall leave standing, for reproduction purposes, a certain proportion of its growing trees and lessen the danger of fire through the proper disposal of his slash. Until forestry is recognized as an industry affected with a public interest, and thus brought under the regulatory powers of government, society is helpless to impose those limitations upon its operations that are of so great importance to it. To take another case, agricultural economists are a unit in holding that the greatest waste of natural resources now taking place is the loss of soil fertility and adaptability to agricultural operations resulting from erosion. Here again, it may correspond to the individual's interest, or at least desires, to farm his land as he sees fit, while the community's interest may dictate a different use, or a method of cultivation that will set up safeguards against the wasting away of the soil or the creation of gulleys. The conflict between the use by the landowner of his land for the erection of disfiguring wayside advertising stands and that of the community in preserving rural beauty is well known.

These few illustrations, which might be materially extended, serve to show that there is here an issue of great importance which is deserving of most careful study by political scientists. In making such a study, it would be desirable that attention be given to the historical evolution of the doctrine, and to the extent to which this doctrine is accepted and acted upon in England and other European countries.

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VII

All, or practically all, of the topics of inquiry that have been suggested up to the present point fall in the field of what may be termed general political science in the sense that they have to do with the organization and operation of government as a whole. Following the plan of proceeding from the general to the particular, I have next sought to enumerate those studies which have to do with each of the several grand branches of government: the electoral, the legislative, the judicial, the executive, and the administrative. Naturally, as one pushes his inquiries into these more specialized fields, the number of subjects that it is desirable to have subjected to study becomes greater and greater. My report for the subcommittee on research thus contains several score of suggested studies. Of these, limitations of time make it possible to mention and comment upon but a few.

In the field of the legislative branch, much the most important studies that, in my opinion, are needed are:

13. The Working of the Bicameral System in the United States

14. The Veto Power in the United States

The use of a two-chambered legislature is one of the most striking features of modern governments. On its face, the use of such a system, which is in such marked contrast with the practice of private corporations, and presents such evident disadvantages in the way of added complexity, expense, diffusion of responsibility, and difficulty in securing action, requires defense. It is significant that the adoption of this system was largely the result of historical accident in the case of England, where it originated, and from which it has been copied by other countries. It is also significant that practically all countries, other than the United States, and particularly those which have recently adopted new constitutions, while making provision for two chambers, have not made these chambers coördinate in powers, final authority being vested in one of the chambers. And England herself, as the result of her Parliament Act of 1911, has likewise reformed her two-chambered system in this way.

It is believed that the time has come when a careful study should be made of the advantages and disadvantages of this system, both from the theoretical standpoint and from that of the manner in which the system has actually worked in the United States. Such a study would be of great practical importance to the states as

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they, from time to time, give consideration to the revision of their constitutional systems. The arguments in favor of such a system, in the case of the states, are quite different from those in the case of the federal government. Originally, a considerable number of the cities of the United States made provision for a two-chambered municipal council. Practically all of them have now abandoned this system in favor of a single chamber. It may well be that a great improvement in the organization of the political systems of the states can be made by the states following the example of their political subdivisions. The subject is at least one well worth careful study.

A study of the veto power in the United States is suggested for various reasons. In the first place, it is not only one of the characteristic political institutions of our country, but one which, so far as its use is concerned, has undergone a radical transformation within comparatively recent years. As is well known, the primary motive dictating the incorporation of this feature in our political system was the desire to provide means through which the chief executive might, in a measure, protect his office from aggression on the part of the legislature and, if need be, keep the legislature from the assumption of powers not intended to be exercised by it. In point of fact, these original motives have been almost wholly lost sight of. Not only do chief executives freely use this power to defeat proposed legislation of all kinds of which they do not approve, but the general public expects them to use this power in this way. The result is that the office of chief executive has become, to all intents and purposes, a third branch of the legislature. In the second place, it is not so well known that the conditions governing the exercise of this power as contained in the state constitutions are by no means identical in all cases. In some cases the power applies to the disapproval of particular items in appropriation bills, or even to the reduction of such items. Thirdly, and most important of all, there is little or no information regarding the manner in which this institution has actually operated in the United States, the extent to which it has prevented the enactment of unwise legislation, or placed obstacles in the way of desirable legislation; the extent to which the power has been indirectly used through a threat to use it if certain modifications were not made in legislative proposals under consideration; the influence that the exercise of this power has had upon the development of executive

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leadership; the legal questions to which its use has given rise, such as those having to do with what is known as the pocket veto, etc. It is in view of these questions that it is thought that the time has arrived when a thorough reëxamination should be made of this institution from the standpoint both of the principles involved in it and of its practical operations in the past and at the present time.

VIII

As regards the executive branch, there is at least one study that it is highly desirable to have made, and which may be entitled:

15. The Office of Chief Executive in the United States: A Study in Political Evolution

Few, if any, political institutions of the United States have undergone such important changes in recent years as the office of chief executive. Originally conceived of as an officer who would be little more than the titular head of the government, exercising a limited number of powers carefully enumerated in the Constitution, the chief executive has tended to become the dominant authority, not only in all matters of administration, but even in the field of legislation. To these powers are added the increased influence which he exercises as the head of his political party. In some respects, the most important feature of the modern movements for the adoption of budget systems and the reorganization of the administrative branches of the state governments is the extent to which increased responsibilities and powers have been thrown upon the chief executive. The relations of this officer to the electorate, to the legislature, and to the administrative services are radically different from what they were in the past. A study of this evolutionary process would be of great interest in itself, and would assist in the settlement of the new questions of the distribution of governmental powers that are constantly arising.

IX

It is in the judicial branch, however, that the American student will find the broadest field for original research. Of the several branches of public administration in the United States, that of the administration of the law is much the most unsatisfactory. Though constituting a primary function of government, and affecting the welfare of the people in a more direct way than almost any other

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activity of the government, there is probably no single thing that our governments do with less efficiency and economy. Both our system of courts and their methods of procedure are almost universally recognized as defective. The same is true of the agencies of the executive branch having to do with the enforcement of the criminal law, the offices of prosecuting attorney, the police, the coroner's office, etc. In their practical operations, the courts and the administrative agencies are expensive both to the government and to litigants. They perform their work with great dilatoriness; and miscarriages of justice are frequent.

If the student of politics and jurisprudence has any obligation, it is, therefore, that of subjecting every phase of this branch of government to intensive study for the purpose of determining wherein its defects lie and the action required for their correction. This obligation is all the greater since this field has been so generally neglected in the past.

To attempt to enumerate even the specific studies that it is desirable to have made would require the preparation, in effect, of an outline of the whole field of judicial administration. Here, I will have to content myself therefore with only these general remarks.

X

Turning now to the administrative branch, we have to do with a field in which an enormous amount of research work has been done in recent years. Some two-score permanent agencies, in the form of institutes and bureaus of governmental research, have been set up having as their sole, or primary, function the prosecution of work in this field. A score or more of the states have had made comprehensive surveys of their entire administrative machinery and procedures, not to speak of the many more that they have had made of particular branches of their administrative systems. These special surveys have been supplemented by others carried on, or sponsored, by such organizations as the National Education Association, the General Education Board, and certain of the endowments. Finally, the universities have very widely adopted the policy of creating bureaus, or institutes, of governmental research as a part of their systems for the instruction and training of their students.

Great as is the volume of work done in this way, the field has, however, by no means been fully exploited. There still remain

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many states, almost the totality of our cities, and an untold number of other political subdivisions whose administrative systems it is in the highest degree desirable to have subjected to similar study.

Valuable, however, as is the extensive literature resulting from these surveys, as throwing light upon the problems of public administration in the United States, it has the serious limitation that it deals with particular conditions as existing in particular governments. Only incidentally does it seek to set forth general principles. While it may be that public administration is not entitled to the designation of a science, as that term is employed in respect to the natural sciences, studies in this field have gone far enough to establish that there are at least fundamental principles, of more or less general application, analogous to those characterizing any science, which must be observed if the end of administration, efficiency in operation, is to be secured. One of the most important tasks confronting political scientists is the determination of these principles and their statement in proper form, accompanied by the supporting explanations and arguments that will lead to their acceptance.

In my volume, *The Principles of Public Administration,* in the other volumes in the series, "Principles of Administration," published by the Institute for Government Research, and in such other volumes as *Introduction to the Study of Public Administration,* by Professor Leonard D. White, a beginning in this direction has been made. These volumes, however, deal only with what may be termed general administration, broadly viewed. They give almost no consideration to the special problems of administration as presented by the individual services corresponding to the grand functions of government. The public health administrator, the public works administrator, and the like, while they should find much of profit in consulting these volumes, will search them in vain for instructions as to how they should handle their special technical problems of organization and procedure. Nor will they find any such information in satisfactory form in other works. There are few greater services to be rendered to the cause of efficient administration than the preparation of a series of volumes that will supplement the ones just enumerated by taking for their subjects the consideration of the principles of administration of these special branches of administrative work.

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Among studies of this character of which there is believed to be urgent need, mention may be made of the following:

16. *Principles of Public Education Administration*
17. *Principles of Public Health Administration*
18. *Principles of Public Works Administration*
19. *Principles of Welfare Administration*
20. *Principles of Penal Administration*
21. *Principles of Pardon, Parole, and Probation Administration*
22. *Principles of Property Tax Administration*
23. *Principles of Inheritance Tax Administration*
24. *Principles of Public Debt Administration*
25. *Principles of Workmen's Compensation Administration*
26. *Principles of Statistical Administration*
27. *Principles of Hospital Administration*
28. *Principles of Property Accounting*
29. *Principles of Administrative Coöperation.*

These studies should seek to do two things: first, to make a comprehensive survey of existing conditions as regards the organization and procedure of the national, state, and local governments for the handling of the several subjects with which they have to deal, the special provisions, if any, for their financing, the relations, coöperative or otherwise, existing between the organizations of the several governments of which they are a part; and, second, on the basis of this information, to formulate and state the principles that it is believed should govern in handling these matters. Fundamentally, the effort should be made to produce treatises that would be of maximum usefulness to all officials having to do with the conduct of the affairs to which they relate.

XI

In the foregoing, I have had the time to mention only a comparatively few studies having to do with matters of general political science or that relate to the more fundamental features of our own political system. In doing so, my primary purpose has been to bring home to the younger student a realization of the fact that political science is one having to do with constantly changing conditions, and that there is hardly a political institution or principle, no matter how firmly it may seem to be sanctioned by past thought and practice, that does not need periodically to be subjected to reëxamination in the light of changed conditions.

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It is when one turns from this broad, to the narrower, field of the problems presented by particular classes of government, or particular governments within a class, or to the special subdivisions of our subject—international law, constitutional law, administrative law, the organization and operation of political parties, and the like—that the number of studies that it is desirable to have made becomes almost too extensive for mention. In my report for the subcommittee on research, to which I have alluded, I have, nevertheless, listed and commented upon some fifty or more topics having to do with our national and state governments that seem to be of special importance and urgency. And this report, it is understood, will be supplemented by other reports by the other members of the committee, and others whose collaboration has been sought, dealing in like manner with our municipal and local governments and the other fields of political science that have been mentioned. And it is to these reports that the student, seeking for guidance in respect to how he can best dedicate his time to the advancement of his chosen profession, should turn.

In conclusion, may I say that it is only too fully recognized that what has been presented here and in my subcommittee report is but the thought of a single individual, and one whose active work has had to do with but a limited number of the branches collectively constituting the broad domain of political science. It is his hope, however, that other political science elders, whose work and thoughts have been in other fields, and whose viewpoint is different, may be tempted by his example to undertake a similar exposition. That a great service to political science would be rendered by their doing so would seem certain.

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WILLIAM OF OCCAM AND THE HIGHER LAW, II*

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It is in connection with Occam's elaborate theory of property that we can most readily grasp the importance of his theory of higher law, particularly as embodied in the *jus gentium*. We must, therefore, investigate this subject in considerable detail.

In Occam's view, God is originally the source of all property. But, as in the case of law and government, this is true only in the most general and indirect sense. Most property rights arise from human law and only mediately from God, although in a few special cases such rights follow directly from special divine ordination or from *lex divina*.[78] Occam cites a passage from St. Thomas Aquinas (*Summa Theol.* II, II, Qu. 44, Art. 2) stating that separate possessions are not according to natural law but are founded upon human or positive law, and are added to natural law through the exercise of human reason.[79] In the primal condition of mankind, or in the state of innocence in the Garden of Eden, all property was common and none was discrete or private. Before Eve came, Adam had only a *de facto* right of user and no greater right of private property than a sole remaining monk would have in the property of a monastery.[80] The natural condition of innocence, in which a law higher than any of purely human creation makes all things common, corresponds to a state of affairs in which Occam's natural law (second sense) prevails. He specifically informs us, indeed, that "in the second sense of natural law, and not the first, all things were common, . . . and if after the fall all men had lived according to reason, all things would have been held in common, since private property was introduced on account of iniquity."[81] Communal ownership could not possibly exist by natural law in the first sense, for in that case nothing could have been licitly appropriated privately either by *jus gentium* or by *jus civile*. We must remember that natural law, taken in the first sense, is immutable, invariable, and indispensable.[82]

* For Part I, see this REVIEW, December, 1932.

[78] *Opus Non. Dier.*, ch. 88, p. 1147.
[79] *Ibid.*, ch. 88, p. 1146.
[80] *Ibid.*, chs. 26 and 27, p. 1073 ff.
[81] *Dial.* III, II, III, 6, p. 932.
[82] *Ibid.*

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Private property, then, results from human legal dispensation. It rests upon a "coherently heterogeneous" system of private rights (*proprietas*) and immunities replacing an "incoherently homogeneous" *dominium* vested in the entire community. To a large extent, private property rests upon a basis quite distinct from strictly civil law, or the law of kings, emperors, and other political authorities. It is founded upon a human law anterior to the law of any kings.[83] This can only mean logically that such rights of private property are based on the *jus gentium*, the only kind of human law which stands above strictly civil law. "Private property rights [*dominia rerum* is here used as the equivalent of *divisio rerum*] were acquired outside of civil judgment by human law." As St. Isidore says, "*jus gentium* is the occupation of seats [*occupatio sedium*] etc. . . . By the *jus gentium* not only forms of action but also the occupation of seats was introduced."[84] Division of *dominium* into separate parts was introduced through human addition, and consequently by human law. This custom of the *jus gentium* [*consuetudo iuris gentium*] "is contrary to that natural equity which existed in the state of innocence, and indeed to that natural equity which ought to exist between men following reason in all things." The custom, however, is not contrary to that natural equity existing between men prone to dissension and to acting badly. The contradiction is according to nature, not human morality.[85] Here we can see clearly Occam's practical bent. He was willing to adapt norms of ideally pure natural law to the exigencies of social relations not illuminated exclusively by the white light of reason, and to accept *jus gentium* as a law good in so far as man's imperfect character and condition permits goodness. In short, we see here a "natural law with variable content," applied specifically to the fundamental question of private property.

What, then, is the position of emperors and kings[86] in relation to rights of private property? We have seen above that the Emperor is ordinarily bound by *jus gentium*.[87] It follows that normally he cannot arbitrarily deprive individuals who have rights in private property by the *jus gentium* (i.e., most individuals) of those rights.

[83] *Opus N. D.*, ch. 88, p. 1147.

[84] *Ibid.*, ch. 91, p. 1149. Aquinas again had this theory of property as an institution of *jus gentium* in rudimentary outline, as did John of Paris.

[85] *Ibid.*, ch. 92, p. 1150.

[86] The principles applying to the two are identical. *Dial.* III, II, II, 25, p. 922.

[87] See above, vol. 26, p. 1013.

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Occam unequivocally opposes those who claim that the Emperor can do everything in temporal matters not against divine and natural law, and who cite the much-mooted Roman-law maxims of "*imperator legibus solutus est*," "*quod principi placuit legis vigorem habet*," and "*error principis facit jus*" in support of their claims. The Emperor, though not bound by his own law, must keep *jus gentium*, as higher human law, unless he sees that keeping it derogates from the common utility.[88] In relation to the goods of his subjects, he can do only those things that further that common utility.[89] He has no absolute rights over subjects; they would be his slaves if he could make them do anything except what is contrary to natural and divine law.[90] The Emperor is not sole lord of all temporal property, but he is lord in such a way that "he can use them [temporals] and apply them to the common utility whenever he shall see that the common welfare takes preference over private interest. Of things pertaining to others, he has *dominium* in so far as he is able for cause and for the common utility of the people, and on account of the delicts of their possessors, to take such goods away from them and to appropriate them to himself or give them to others. Because, however, he cannot do this at his own arbitrary discretion, but as a consequence of the guilt of the possessors or for cause, to wit, the common utility, he does not have arbitrary *dominium* in them."

The Emperor certainly possesses some strictly private property which he can use and control in any way that he chooses, no matter how arbitrary. Besides this class of property and the property of private citizens, there is a category of state property over which the Emperor possesses a far from absolute authority. Occam's distinction is quite clear. "In certain immovable things, however, he does not have the right and *dominium* thus absolutely, because he cannot sell, give, bequeath, or alienate them, just as in the case of the *imperium* and the kingdoms [*regna*], the alienation of which would redound to the notable detriment of the realm [*imperii*], and which therefore he cannot alienate. If he alienates *de facto*, such alienation does not hold *de jure*, but everything is to be revoked to the jurisdiction of the realm [*jus imperii*], and he should be held to make restitution if he can. Nevertheless, in a sense he is lord of

[88] *Dial.* III, II, II, chs. 26 and 28, pp. 922 and 924.
[89] *Ibid.*, ch. 23, p. 921. Cf. also John of Paris.
[90] *Ibid.*, ch. 27, p. 923.

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all such things, in so far as he can sell and defend them, and use them for the common utility, and in so far as no other man is deemed to have any right in them."[91]

Here the imperial rights over state property, or the fiscus, are treated as property rights, but as strictly limited property rights. This assimilation, or partial assimilation, of the *imperium*, or legal authority of the Emperor, to a limited property right (limited *dominium*) shows the importance of understanding Occam's theory of property.[92] Inevitably in the Middle Ages rights of private property carried with them (at least for the upper levels of the feudal hierarchy) a large amount of political and legal jurisdiction. In the light of this fundamental feudal principle, it is essential to ascertain Occam's theory of the incidents of the *dominium* inhering in emperors and kings. If we found that he recognized the Emperor's unlimited *dominium* in goods, it would be logical to infer that he placed no restraints upon his absolute power, except those resulting from divine and natural law. As a matter of fact, we have already found just the opposite to be the case. The *jus gentium* so strictly limits any imperial rights inhering both in the private property of individuals and in the common property of the state that Occam can say, in relation to these kinds of property, that, "taking the term 'property' most strictly and properly, the supreme lay authority has no property."[93]

We must not, however, neglect the other side of the shield. Private individuals are normally immune from arbitrary interference by the Emperor in their property rights, but they have no absolute, eternal, never-variable immunities. Here again the fundamental relativity of Occam's point of view unmistakably crops out. Since property rights are based on human law, they can be modified or destroyed by that law, including the laws of kings and emperors, not by any arbitrary and ordinary process, but for legitimate cause, when exceptional circumstances warrant it, when the public welfare demands it, or when the individual concerned is guilty of a crime. In other words, unless we seriously misinterpret Occam, we are dealing here with an embryonic conception of eminent domain,

[91] *Ibid.*, ch. 23, pp. 920, 921. Cf. Bodin's prohibition of the *leges imperii* against alienation of the royal domain. *De Republica*, Book I, ch. 8.

[92] This assimilation appears clearly in the *Octo Quaes.*, II, ch. 1, where he discusses the origin of the "*proprietas* of the supreme lay authority."

[93] *Octo Quaes.*, II, 2, p. 336.

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or better still (since he does not mention compensation) with a rudimentary idea of police power. Indeed, we have before us one of the forerunners of the due process clauses of the federal[94] and state constitutions in the United States. It is an even clearer case of the foreshadowing of these modern constitutional provisions than Chapter 39 of Magna Carta, because Occam is dealing specifically with property rights. These modern rules constitute real legal restrictions on legislative power enforceable by the courts. The individual's rights are not absolute, but they are none the less real. The deprivation can occur only by "due process of law," and that means that some statutes, purporting to take away private property, are legal and some illegal. We have here a real legal limitation on determinate political authority.

It may indeed be argued that today the constitutional amending authority can override these constitutional limitations. The point is that in Occam's time no such legally constituted amending authority existed. Emperor and king were for him the highest determinate political authorities (except under very extraordinary circumstances), and he regarded both as bound by the *jus gentium*.

The history of the theory of private property expropriation through political authority has been treated in considerable detail by G. Meyer.[95] Both *Glossators* and *Post-Glossators* split on the matter, some holding, like Martinus and Baldus, that the Emperor had complete, or practically complete, *dominium* in his subjects' goods; others, like Bulgarus and Bartolus (and the weight of authority rests on this side), holding that expropriation could occur only *ex justa causa*.[96] The latter jurists, more impliedly than expressly, seem to base private property upon the *jus gentium*.[97] Bartolus develops such a theory at some length and appears to be in complete accord with Occam.[98]

This discussion of Occam and of the medieval lawyers concerning

[94] Fifth Amendment: "No person shall be deprived of life, liberty, or property without due process of law." The Fourteenth Amendment extends the prohibition to the states.

[95] *Das Recht der Expropriation*, pp. 76–108.

[96] *Ibid.*, Martinus received a horse from the Emperor for his answer, while Bulgarus, who gave the contrary opinion, disconsolately philosophized: "Amisi equum, quia dixi aequum, quod non fuit aequum."

[97] *Ibid.*, p. 91, citing Gloss ad L 2 Code (1, 19).

[98] It is interesting to note that Meyer, preoccupied with the jurists, does not once mention Occam, despite the fact that his theory has a much broader philosophical basis than that of the legists.

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the right of the Emperor to expropriate private property must arrest our attention. As we have noted, it exhibits the clearest analogies to the present ever-recurring arguments and cases. Where we speak of "due process of law," the medieval writers talked about *justa causa*. We characterize, as did they, a certain confiscation as justified on grounds of "public policy" (*utilitas*). Or we, as they, condemn it as against "natural justice." To the question of what law shall serve as a basis for property rights, or to the query of why or when they should be respected, we are unable to furnish more satisfactory answers than the medievalists. Some writers and lawyers would today interpret the phrase "due process of law" so loosely, or the words "public utility" so inclusively, as to justify any executive or legislative exercise of the police power. They would probably find an ardent supporter in Baldus, who made *justa causa* equivalent to "any conscious desire" on the Emperor's part. But we think we are correct in concluding that the weight of authority lies on the other side, and the generally prevailing opinion, then as now, gives a real meaning to the concept of "due process of law." Be the determinate authority Emperor or Pope, President or Congress, it must submit to real limitations. These may be ill-defined, but they are none the less real. Congress and the state legislatures have discovered to their sorrow that it is possible to go beyond what the courts deem "reasonable limits." But even beyond this "rule of reason" there seems to exist an ineradicable conviction that the notion of property involves some fundamental, no matter how vaguely defined, which no earthly authority has the competence to touch. In a very real sense, and with abiding constancy, both modern lawyers and medieval legists seem to believe, implicitly or explicitly, that property is a right based upon and protected by a higher law. The fact that with such unanimity writers appeal to a standard of "reasonableness" or "public utility," and look upon property as based upon some fundamental or natural law, is one of tremendous significance. That significance seems to us to be that rulers, in order to stay within the limits of legality, have had to act inside bounds of what we today call "fair play." Of course, people will fiercely disagree as to the exact scope of the field within which acts of authority are fair. But there is almost unanimous agreement that things near the center of the circle are fair and that extensions which include matters lying far outside are manifestly unfair. Most of the argument

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will occur over the delimitation of the circumference of the circle, but that does not decrease the abiding significance and stabilizing influence of the very important sphere of agreement at the center.[99] To us, the ideal of justice (reasonableness, due process of law, or just cause) as related to such a matter as private property seems of extreme importance as a limitation, a goal, a stabilizer, and a great moderating force. A problem such as that of private property clearly demonstrates the permanent and practical significance of this great imponderable.

The meaning or content of the concept "property" has inevitably changed from age to age. This was bound to happen as the particular social and economic order which gave rise to this or that form of property-holding altered. Moreover, different ideas of "what is for the public utility" or "what is a reasonable encroachment" have been held by different writers in different countries and at different epochs. It is the beauty of the theories of such men as Aquinas, Bartolus, and Occam that they recognize this inevitable demand of change and variation and avoid the pitfall which trapped the later natural rights school. Locke, for example, regarded private property as a primitive, natural right anterior to the state, and to be logical he had to consider the function of civil law as exclusively one of protection and preservation of that natural right. Modern critics, in legitimately attacking this absolutistic idea of property, have gone to the other extreme and have based property rights entirely on civil law or the will of the state, meaning organized political authority. Occam puts these rights on a social basis, as logically, and often temporally, prior to state law. Instead of natural-legal rights inherent in the individual, he extols what we may call social-legal rights inherent in society.[100] This enables him both to retain real legal limits on state power and to grant the right of the state or government, if the general welfare imperatively requires it, and if the state's action accords with justice, to override human property rights not eternally immutable. Again we can only say that we discern here a "natural law with variable content."

The distinction between society and state, between community and government, is of transcendent importance. Occam certainly recognized it, even if in an inchoate and unconscious form. In one

[99] Cf. Walter Lippman's spheres of anarchy and spheres of agreement.
[100] Cf. above, vol. 26, p. 1015.

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most noteworthy passage, he says that "the Emperor has no greater authority in temporals than the people [*populus*] had, since the Emperor has his authority from the people . . . because the people could not transfer more jurisdiction or authority to the Emperor than it had." But the people never had such plenitude of power that it could "impose on every one of the people everything not contrary to divine or natural law, because it could not order those things which did not have to be done of necessity."[101] In other matters, the consent of all is required. Now, it is submitted that we have here a distinction between the state, or *populus* (political authority or government) and society, or *communitas*, at least embryonically present. The *populus*, prior to the transfer of its authority to the Emperor, was the highest organized, determinate political entity. It was society organized to act as a unit; it was the state.[102] Clearly, according to Occam, the *populus* has or had no unlimited power. Does not this mean that the state has no unlimited power? The *populus* (a legally determinate political authority) transferred to the Emperor (another legally determinate political authority) all the legal power that it had. Neither is unlimited. Both can override property rights, but only by "due process of law" and for the general welfare. Any change in property relationships in the ordinary course of things, and when no question of the general welfare arises, can take place only by the "consent of all," i.e., *not* by a conscious, political act, but by a communal, social one. Once communal ownership is split up into private property by the *jus gentium*, society has an interest in keeping existing arrangements and vested rights normally intact. Of course, no individual obtains an absolute *carte-blanche* with his piece of private property. The community preserves the public interest by acquiescing in the establishment of a political authority (*populus*, *imperium*, emperor) with limited legal competence to override private rights in cases where the general welfare imperatively requires it. Occam's thought in this matter is by no means thoroughly conscious or self-consistent. But certainly some such distinction as the modern one between society or community on the one hand and state or government on the other lay in the back of his mind.[103]

[101] *Dial.* III, II, II, 27, p. 923.

[102] Cf. Cicero's famous definition of the state, *De Rep.* I, 25: "Respublica res populi; populus autem non omnis hominum coetus, quoque modo congregatus, sed coetus multitudinis juris consensu et utilitatis communione sociatus."

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At times he seems to slide over the distinction and to identify or confuse *communitas* with *populus*.[104] But, in general, I think he considered the *populus* bound by the *jus gentium*, the *communitas* free from it and able, acting by that customary process of the "consent of all mortals," to change it.

If the Emperor has no absolute rights in the property of his subjects, it is for Occam *a fortiori* true that the Pope has none in the temporal possessions of the Church, and certainly none in the goods of private laymen. He has only a right of user in temporal goods necessary to perform spiritual functions, the title to such goods vesting in the *ecclesia, congregatio fidelium*, or whole body of faithful, clerics and laymen, men, women and children. This papal right may, however, become very sweeping and involve confiscations, depositions, and the transfer of realms, but only when spiritual interests are threatened and laymen fail to fulfill their legitimate duties. The same principles apply to every other link in the ecclesiastical hierarchy, not excepting monasteries. Occam got into trouble, not only with the Pope but also with his own Franciscan order, by refusing to recognize that it had more than a right of *de facto* user in the temporal goods it administered. He argued that monks were, or should be, more perfect than other men, and should not contaminate themselves, even collectively, with property, but should live according to natural law (second sense) where all property is common to mankind. His logic seems quite unassailable.[105]

Occam's theory of liberty and slavery is in all essentials similar to his theory of property. Although by natural law, in the second or normative sense of "natural equity," all men are free, slavery arises legitimately enough under the *jus gentium*.[106] However, that law does not make all men slaves, and the Emperor or king most emphatically cannot treat free men as slaves. The ruler dares not order freemen to give up their goods at his bidding unless he can show grounds of public utility. Slaves and freemen are not held to

[103] This distinction forms the cornerstone of all truly consistent modern pluralistic theories of the state.

[104] *Dial.* III, II, II, 24, p. 921, where he cites St. Augustine and talks about the *populus* transferring to the Emperor all power to make human laws. This is impossible according to the above cited passage (p. 31), which clearly implies that the *populus* did not, and does not, have authority to make all human laws.

[105] *Octo Quaes.* I, 17, p. 333; I, 7, p. 322; *Opus N. D.* 3, 1006; 8, 1026; *Dial.* III, I, I, 16, p. 786.

[106] *Dial.* III, II, III, 6, p. 932–3.

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equal obedience.[107] The legally limited character of imperial authority is again clearly evident here.

This brings us to a last and most interesting example of higher law in Occam's theory, one which is today very much *à la mode*. It seems that Occam refused to grant the Emperor the authority to order fasting (*jejunare*) or to prohibit wine-drinking (*bibere vinum*). No subject need obey his illicit and unjust commands, and commands to fast or forbidding the drinking of wine are just that, since they do not pertain to the office of the Emperor.[108] The analogy between this limitation and modern opposition to legislative enactments or constitutional amendments embodying so-called sumptuary legislation cannot be missed.[109] The restriction probably is best classed under *jus gentium* rather than under eternally immutable natural or divine law, although Occam does not definitely say so. Normally[110] and regularly, at any rate, interferences with wine-drinking would not be condoned by Occam. His highest determinate political authority (the Emperor) is limited in these sumptuary matters by a law higher than his own. His office or scope of authority, as legally constituted, includes no right to legislate on these subjects. Six hundred years after Occam, the almost identical problem reappeared in relation to the Eighteenth Amendment to the Constitution of the United States, which seeks, in effect, to forbid the drinking of wine in this country. In the National Prohibition Cases,[111] Elihu Root, counsel for the plaintiff-in-error, argued that the highest determinate public-legal authority in the United States, the amending authority (two-thirds of each House of Congress and the legislatures in three-fourths of the states), had no legal right to adopt such an amendment. The amending authorities provided for in Article V of the Constitution, he said, are only agents of the people. They must act within their authority, and that "authority does not embrace the right under color of an amendment to adopt mere sumptuary laws which are not constitutional laws in truth or essence." To be sure, Mr. Root admitted that the "people acting by the same means as were employed in the adoption of the Constitution" could have

[107] *Ibid.*, III, II, II, 27 and 28, pp. 923 and 924; III, II, II, 20, p. 918; *Octo Quaes.* VIII, 3, p. 385.

[108] *Dial.* III, II, II, 20, p. 918.

[109] For the Pope, cf. vol. 26, p. 1023, above.

[110] Occam might have approved of war-time prohibition.

[111] 253 U. S. 350 (1919).

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adopted the amendment. We submit that the "people" in this sense, even if regarded as acting legally and not revolutionarily, is not a *determinate* public-legal authority. The Supreme Court decided against Mr. Root, but the issue remains as far from settled as ever.

Sanctions play a less important rôle in the medieval legal framework than in the modern. Many of the rules of conduct which the medievalists emphatically regarded as law, and not merely as moral injunctions, had no very well worked out or consciously perfected machinery of enforcement. But Occam does envisage cases in which political authorities would refuse to obey the higher-law restraints upon their conduct, and has something to say about the action to be taken in such cases. Although he concerns himself principally with sanctions against illegally acting popes, he also discusses the matter as it relates to emperors and kings. In the first place, he clearly allows a right of passive resistance against an emperor who acts illegally. "No one ought to obey in illicit and unjust things." Subjects are held to obey only in those "things which are necessary to ruling justly and expediently the people subjected to him (i.e., the Emperor)."[112] However, our author goes farther than mere passive resistance. For example, in discussing the respective merits of monarchy and aristocracy, he states that "it would be easier for the people [*populus*] to correct one governor [*rectorem*], if in any way he should act exorbitantly, so that he should be removed, than several."[113] Although the king ordinarily is superior to the whole realm, yet under some circumstances (*in casu*) he is inferior to the realm; because in case of necessity it can depose the king and detain him in a castle; and this right it has from natural law.[114] He even hints at a right of tyrannicide in emergencies. Here perhaps we can see his nominalism emerging as opposed to the realism of Aquinas, who permitted only collective action against a tyrant. He says that it is not miraculous that casually the Pope uses the material sword against the Emperor, "because indeed casually [*casualiter*] a rustic [*rusticus*] can use the material sword against the Emperor."[115]

The nominalistic and individualistic tendencies in Occam have led some writers to ascribe to him distinctly anarchistic leanings. Dorner believes that his enunciation of the right of individual dis-

[112] *Dial.* III, II, II, 20, pp. 917–9.
[113] *Ibid.*, III, II, I, 13, p. 881.
[114] *Octo Quaes.* II, 7, 341.
[115] *Ibid.*, VIII, 5, p. 385.

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obedience in cases where the Emperor commands something contrary to the common welfare is a dangerous proposition offering no guarantee against the dissolution of the state. The individual is left the final judge, and a right of revolution is recognized. "If the representative of the state—the prince—does not represent its interests in a legal manner, then the people can get rid of him [are not obligated to obedience]. One must be struck by the fact that Occam, who usually is concerned with the most subtle juristic investigations, here lays little weight upon giving to the legal order of the state the necessary formal guarantees."[116] This is "permanent revolution," and Occam recognizes it even more clearly than the Reformation recognized the right of resistance. This critic believes that Occam should have pointed out more energetically that law is the only sanction against arbitrariness.[117]

We do not believe that the above interpretation offers a true understanding of Occam's theory. He was miles removed from anarchy. To be sure, his system recognized (as so many magnificent political theories before and since) the individual conscience as the ultimate forum for determining the duty of obedience. But a yawning chasm separates him from anarchy or any other theory tending toward the dissolution of the state. No man can be an anarchist who regards coercion as the principal function and prerogative of the state as clearly as did Occam. The "rule of princes" (*regimen principum*) is instituted, he says, so that evil men may be coerced and that good men may live quietly.[118] A government (*principatum*) is constituted principally to correct and punish delinquents.[119] To be sure, he recognizes a right of revolution, but he also emphasizes the duty of obedience. The secular authority must be obeyed unless his command clearly goes against natural or divine law or the common good.[120] Individuals may resist, but ordinarily the Emperor can with perfect legality put down their resistance. The standard by which the individual must decide whether or not to resist must lie in his own conscience and his own interpretation of the higher law, but the standard by which society as a whole will decide upon the legality of his resistance must be found in the generally prevailing ideas of higher law or in the interpretation of the wisest men acting for the community. The individual may

[116] *Op. cit.*, p. 687.
[117] *Ibid.*, 720.
[118] *Dial*, III, II, I, I, p. 871.
[119] *Octo Quaes.* III, 6, p. 352.
[120] *Ibid.*, I, 10, and *Dial.* I, VI, 100, p. 630.

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judge for himself (he conceivably may even be alone on the side of God), but if he guesses contrary to the prevailing view he will receive little mercy, and society may compel him to conform.

However, Occam thought of the broad principles of the higher law as ordinarily evident enough to any man acting reasonably and with a mind unwarped by passion or prejudice. If, for example, an emperor arbitrarily deprives a man of his property, an uprising in which the ruler is deposed and another substituted must obviously be righteous. More than that, it is legal, not merely morally justified, because Occam, in common with most medievalists, thought of the higher law as real law and not merely morality. Modern critics have assumed that the higher law is a totally, or almost totally, undefined substance which permits unlimited opportunity for honestly differing individual judgments. Occam had fewer doubts about it. Ordinarily, he believed, higher law commands us to obey regularly established authority. Ordinarily, too, the higher-law limits on that authority are apparent enough, so that honest and righteous men can tell when the ruler is acting illegally and when disobedience is justified. Appeal is taken, not from the law to something outside the law, as Dorner seems to assume, but from one body of law to another and higher body of law. Why should we assume the complete indeterminateness and haziness of the latter when Occam erects his whole structure of political and ecclesiastical authority upon it? Surely, in these days of "nullification," it can scarcely be contended, except for the purpose of making political capital, that widespread disobedience to one kind of law, or so-called law, constitutes the repudiation of all law or refusal to submit to any kind of control. At any rate, recognition of the right of contingent revolution by Occam is not the equivalent of anarchy.

The question of sanctions against a recalcitrant or heretical pope, although it bulks very large in Occam's works, since he designed them primarily as literary weapons against Pope John XXII, can only be touched upon. The Pope does not regularly have to submit to human judgment; however, "casually, if he is effected a heretic or appears incorrigible in any *crime* which scandalizes the Church (or if he usurps the jurisdiction of temporal rulers),[121] he is subjected to human judgment and ought to be judged by men and to suffer due penalty according to law [*de*

[121] *Octo Quaes.* I, 16, p. 333.

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jure]."[122] Occam makes elaborate provision for the machinery to be invoked against a guilty or heretical pope.[123] The investigation and punishment of such a pope pertains primarily to the whole body of the faithful. Since, however, this amorphous group cannot usually meet together in one assembly, it pertains secondarily to a general council acting for the whole Church. "If all clerics should be damnably negligent, it would pertain to laymen."[124] In other words, Occam refuses to put any absolute legal power to judge an heretical pope in a general council, made up of clerics and laymen, because it might in certain circumstances be as depraved as he. In fact, any determinate center of authority may at times err; only the whole militant *ecclesia*, or body of faithful, is immune from error.[125] This last statement means merely that somewhere in the whole body of believers there will be people having law and truth on their side. The general council is not always to be taken as acting for the entire congregation (*universalis congregatio*), because it may err. It might happen that pope, cardinals, prelates, clerics, princes, and potentates (*potentes*), as well as general councils, would be infected with heresy. Then appeal would have to lie to the consciences of the "simple and poor" laymen still remaining true to the faith.[126] Occam carries out the argument to its logical conclusion. Sometimes we might even have to fall back on women[127] and, in the most extreme case, on children.[128] These statements should at least indicate how emphatically he regarded any conceivable determinate center of authority as bound by a higher law. All determinate agencies claiming to act for the whole community must act within the bounds of this law. All may conceivably err and, if they do so, their commands do not hold. No absolute legal authority exists anywhere on earth.[129]

Most of our discussion of higher-law limits on determinate authority has been confined to emperors, kings, and popes. This is because ordinarily they are, for Occam, the highest tangible cen-

[122] *Dial.*, III, I, I, 17, 787.

[123] *Ibid.*, I, VI, chs. 13, 47, 57ff, 74 (on the right of disobedience to a pope's commands which violate natural and divine law).

[124] *Ibid.*, I, VI, 57, p. 561. A general council may be summoned *in casu* without royal authorization. *Ibid.*, 84, p. 602.

[125] *Ibid.*, I, V, 25, p. 494.

[126] *Ibid.*, 28, p. 497–8; and cf. the distinction (p. 30 above) between state and society. Here we have the same thing even more clearly expressed for the spiritual sphere.

[127] *Ibid.*, ch. 32.

[128] *Ibid.*, I, V, 35, p. 506.

[129] Cf. also R. L. Poole, *op. cit.*, p. 243.

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ters of political jurisdiction. General councils convene, as we have seen, only under exceptional circumstances, or when popes, emperors, or kings fail to perform their functions or act illegally. Councils meet only for special purposes,[130] and even in connection with these special matters they are not infallible or absolute.

The one thing that stands out like a beacon-light in Occam's political theory is the fact that he considered all human authorities, agencies, or persons as bound by and acting within the limits of a law emanating from a source higher than their own individual wills. This dominant *motif* forms an ever-present undertone, harmonizing and integrating all the complex and (on the surface) apparently unconnected or irreconcilable opinions which he enunciates. He conceived of this higher law as, in part, completely above the power of man to affect in any way whatsoever, as containing unbreakable principles of divine and natural justice. In large measure, however, he regarded it as a higher human law, or as *jus gentium*, ordinarily immutable, or changeable only by the slow customary process involved in the concept of the "consent of all mortals," but capable of adaptation or suspension to meet special cases and conditions. Even in the last instance, however, no absolute prerogatives were allowed. The authority desiring to dispense with *jus gentium* always had to point to the necessity of acting contrary to it in order to further the common good. A higher law always endured to restrain and measure the exercise of authority by any individual will or any determinate political agency. Relativity, not absolute sovereignty, is the true touchstone to Occam's theory.

[130] *Dial.* III, I, II, 19, p. 804.

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CONSTITUTIONAL LAW IN 1931–32

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1931

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A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. Withdrawal of Senatorial Confirmation of Appointment

In its decision in United States v. Smith,[1] the Supreme Court has given final victory to President Hoover in his bitter fight with the Senate in January, 1931, over his appointments to the Federal Power Commission. On December 3, 1930, the President sent to the Senate Smith's nomination to the Federal Power Commission. On Saturday, December 20, 1930, the Senate advised and consented to the appointment and ordered the resolution of confirmation sent to the President. The Senate thereupon adjourned to Monday, January 5, 1931. On Monday, December 22, 1930, the President received the notification that the appointment had been confirmed and on the same day issued Smith's commission. Smith immediately took the oath of office and entered upon his duties. While the record of the Court does not disclose this fact, it will be recalled that one of the very first "duties" entered upon by Smith and his colleagues was the summary dismissal of two subordinates of the Commission generally admitted to have been active in the protection of the public against the aggressions of the so-called power interests. Accordingly, when the Senate convened on January 5, 1931, a majority of its members very much wished to recall the confirmation of Smith's appointment. The Senate rules seemed to provide a way, and on January 5, 1931, the Senate passed a motion to reconsider Smith's nomination and another motion to request the President to return the resolution of confirmation which had been sent to him. On January 10, 1931, the President replied that he was advised that the appointments had been made constitutionally, that he could not admit the power of the Senate to remove a duly appointed executive officer, and that he must therefore refuse to accede to the Senate's request. The Senate, on February 4, 1932, voted again on the question of the confirmation of Smith's nomination, which had been returned to the calendar, and rejected it. The President was so notified. The next day the Senate adopted a resolution requesting the district attorney of the District of Columbia to institute *quo warranto* proceedings against Smith to test his right to continue in office. The Senate employed its own

[1] 286 U.S. 6, 1932.

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counsel, since the Department of Justice, through the Attorney-General, was on record as denying the validity of the Senate's position.

In a unanimous opinion by Mr. Justice Brandeis, the Court upheld the President's position and denied the right of the Senate to recall the confirmation of an appointment after the officer's commission had been issued by the President. This decision rests not upon constitutional grounds, but upon the Court's construction of the Senate rules under which the action of that body was taken. The pertinent sections of these rules provided (1) that reconsideration of the rejection or confirmation of an appointment may be moved in the Senate on the same day on which the vote was taken or on either of the next two days of executive session; (2) that if notification of action on the appointment has gone to the President before the expiration of the time within which the motion to reconsider can be made, such motion shall be accompanied by a motion requesting the President to return the notification; (3) that nominations confirmed or rejected by the Senate shall not be returned to the President until the time for the reconsideration of them has expired unless the Senate shall order otherwise. The Court does not consider the constitutional question which would be raised by a Senate rule expressly reserving the right to reconsider a vote of confirmation or rejection within a fixed period of time if the President had during that interval issued a commission of appointment. The rules are held to disclose no such intention. The obvious intention of the rules is that the power to reconsider shall be exercised, if at all, before the notification of Senate action goes to the President. The natural meaning of a notification of confirmation is that the appointment is complete and the President is free to act. It is necessary that relations between the two departments be maintained upon a basis of formality and regularity. The construction urged by the Senate would make it necessary for the President to find out through unofficial channels whether reconsideration was still possible under the rules, and if so, within what time it was possible. This would result in an uncertainty and confusion so serious that such a construction must be rejected. Furthermore, it appears that the President has uniformly refused to return to the Senate notifications of confirmation of appointments when the commissions of the appointees have issued before the request has been received. It also appears that the Senate has uniformly acquiesced in such refusals. It seems clear that the rules of the Senate contemplate that the signing of a commission by the President cuts short the power of the Senate to reconsider its confirmation, and that a Senate order of immediate confirmation indicates that the Senate waives its right to reconsider within the two-day period stipulated by the rules and authorizes the President to perfect the appointment forthwith.

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2. President's Power to Sign Bills after Congress has Adjourned

In the case of Edwards v. United States,[2] the important question is raised whether the President may sign a bill after the final adjournment of Congress at the end of a session, and also at the end of a Congress. President Hoover, on March 5, 1931, signed a bill giving the Court of Claims the right to adjudicate a certain claim against the government. Congress had, of course, adjourned the day before, its term of office having expired. Speaking for a unanimous Court, Chief Justice Hughes pointed out that the question had long been in doubt. Many Presidents have refrained from signing bills after the final adjournment of Congress because of doubts as to their power to do so. A number of instances are cited, however, in which the President has thus signed bills. The President acts legislatively under the Constitution in signing bills, but he is not part of Congress, and there is no necessity that he should restrict his legislative activity to the precise days on which Congress is in session. This does not mean that the President has more than ten days within which to sign bills after such adjournment. Nor does it mean that an incoming President could approve bills passed during the official term of his predecessor. The purpose of the ten-day limitation on the President's power to approve bills is, first, to assure prompt action and guarantee an opportunity for congressional reconsideration of bills which the President disapproves; and secondly, to safeguard the opportunity of the President to consider all bills presented to him. There is no requirement that bills approved by the President shall be returned to Congress, and it is clear that neither of the two purposes of the ten-day restriction are defeated or impaired by allowing the President to sign bills after Congress has adjourned. In fact, such a course seems necessary if he is to be guaranteed the fair opportunity for scrutiny of the bills which the Constitution contemplates. One hundred and eighty-four bills were presented to the President within twenty-four hours of the adjournment of Congress on March 4, 1931. To allow their approval after Congress had adjourned is the only way to secure their deliberate consideration. Only the very clearest and strongest reasons would justify preventing such consideration by mere implication.

[2] 286 U.S. 482, 1932. In La Albra Silver Mining Co. v. United States, 175 U.S. 423, 1899, the Court held that the President had the constitutional right to approve a bill within ten days even though Congress at the time of the President's action had adjourned for a recess. In this instance, President Harrison had signed a bill on December 28, 1892, at which time Congress was in recess for the holidays. The Court said that the mere fact that the President in signing a bill is performing a legislative function does not require him to perform that function while Congress is actually sitting.

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3. Regulation of Commerce

The third section of the Sherman Act forbids, among other things, "every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . in the District of Columbia. . . ." In Atlantic Cleaners & Dyers v. United States,[3] the appellants had been enjoined from the continuance of contracts and agreements under which through a monopolistic control of the cleaning and dyeing business in the District of Columbia they were controlling retail prices and were allotting amongst themselves the exclusive patronage of retail establishments. They denied that they were engaged in commerce within the meaning of the commerce clause of the Constitution upon which the Sherman Act rests, since their business did not include the buying, selling, or exchanging of commodities, but the rendering of service. While implying that this interpretation of the term commerce is sound, the Court sustained the injunction on the ground that in forbidding restraints of trade and commerce in the District of Columbia Congress is not limited to the commerce clause as a basis for its regulation, but is also exercising the broad power to govern the District delegated by Article I, sec. 8, cl. 17, of the Constitution. Under this authority, it has all the powers of a state legislature in governing the District. It is not necessary to regard the term trade used in the Sherman Act as synonymous with commerce; but it may be given a broader meaning, which may reasonably include the business of the appellants.

In Louisiana Public Service Commission v. Texas & N. O. R. Co.,[4] the Court had an opportunity to throw light upon the meaning of the constitutional clause which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." The Interstate Commerce Commission had established rates on the transportation of gravel and other road materials in Arkansas, Oklahoma, Texas, and that part of Louisiana west of the Mississippi, and including certain points on the east bank of the river. Eight cents per ton was added to the otherwise straight mileage charge for ferrying the materials across the river. This, it was alleged, was a preference given to Galveston, Houston, and other Texas ports over New Orleans and Baton Rouge in Louisiana. The Supreme Court upheld the Commission's orders. It pointed out that the Constitution does not prevent discrimination between ports, and that Congress has frequently adopted policies whereby such discrimination has been practiced, as in the construction of improvements. The forbidden discrimination or preference is between states in respect of their ports, and that, of course does not appear in the facts of this case.

[3] 286 U.S. 427, 1932.

[4] 284 U.S. 125, 1931.

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4. National Taxation

Federal Taxation of Income from Lands Leased from the State—Stare Decisis. A divided court is still struggling with the difficult problems involved in the taxation of government agencies and instrumentalities. The question raised in Burnet v. Coronado Oil & Gas Company[5] was whether the federal income and excess profits tax could validly be imposed upon the income of a company to which the state of Oklahoma has leased some of the public lands of the state held for school purposes. The state received a stipulated share of the gross production of oil and gas. The entire income of the company came from the sale of its share of the output. In 1922, the Court had faced essentially the same question, or, more accurately, the converse of it, in Gillespie v. Oklahoma,[6] and, with three justices dissenting, had held that the state could not tax the income derived from the lease of federally restricted Indian lands, since the leases were the instrumentalities whereby the federal government protected its wards. In the present case, five of the justices, speaking through Mr. Justice McReynolds, held the Gillespie case controlling, declared the state of Oklahoma to be engaged in a governmental function in the leasing of the lands for the benefit of the school system of the state, and denied the right of the federal government to tax the income derived from such leases. Justices Stone, Brandeis, Roberts, and Cardozo dissented, the first two writing separate opinions. In both dissenting opinions there is a blunt statement that the Gillespie case should be overruled, and that of Mr. Justice Brandeis is devoted to a justification of the Court's action in overruling a previous decision, especially when the earlier decision was grounded, not upon purely legal or constitutional considerations, but upon judicial judgments as to factual situations. Where this factual element is controlling, as in due process, equal protection, and commerce cases, the Court should not apply the doctrine of *stare decisis* with the rigor with which it might properly be applied to a decision establishing a rule of law. Furthermore, "the judgment of the Court in the earlier decision may have been influenced by prevailing views as to economic or social policy which have since been abandoned." The question in the present case as to whether the federal tax will actually burden a state instrumentality involves just such a judgment as to the facts as should lead the Court to feel free to revise its previous holdings in the light of subsequent reason and experience. Mr. Justice Brandeis has appended in his

[5] 285 U.S. 393, 1932.

[6] 257 U.S. 501, 1922. Mr. Justice Holmes wrote the opinion in this case and declared: "The same considerations that invalidate a tax upon the leases invalidate a tax upon the profits of the leases, and . . . a tax upon such profits is a direct hamper upon the efforts of the United States to make the best terms that it can for its wards."

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footnotes an impressive list of citations of the cases in which the Supreme Court has overruled or qualified its earlier decisions. This opinion richly repays close study.

Due Process—Tax on Gifts in Contemplation of Death. In Heiner v. Donnan,[7] the Court held invalid as a denial of due process of law that provision of the revenue act of 1926 providing that all gifts *inter vivos* made within two years of the death of the donor shall "be deemed and held to have been made in contemplation of death within the meaning of this title." There is no question as to the power of Congress to levy an excise tax upon all gifts *inter vivos* or its power to extend the provisions of the federal inheritance tax law to gifts actually made in contemplation of death, gifts made for the purpose of evading the tax on the transfer of the estate. Also, it is proper to create a presumption that gifts made shortly before death were made for the purpose of such evasion. The present act, however, not only creates this presumption but makes it irrebuttable. To impose a tax upon an assumption of fact which the taxpayer is not allowed to prove to be untrue is so arbitrary and unreasonable as to deny him due process of law. It does not aid the case for the tax to say that without the questioned provision the government would sustain severe loss of revenue. This amounts to saying "that the individual, innocent of evasion, may be stripped of his constitutional rights in order to further a more thorough enforcement of the tax against the guilty." Its legislative history shows that this is not a gift tax, but even if it were, it would deny due process of law by reason of its arbitrary classification, since there is not, in the opinion of the Court, any more reason for taxing gifts made within two years of death than for taxing gifts made within two years of marriage or any other event.

Justices Stone and Brandeis dissented in an opinion written by the former. It is pointed out that the Fifth Amendment under which the section is attacked contains no equal protection of the laws clause. This means that a federal classification for purposes of taxation need not be tested by the same strict rules of equality required of the states by the Fourteenth Amendment. Such taxes need merely meet the broader test of due process of law. Applied to the present case, this means: Is the selection of gifts made within two years of death as a subject for taxation so palpably unrelated to the admitted and legitimate objects of the law as to make it wholly arbitrary? The answer should be in the negative, in view of the elaborate evidence showing how necessary and important this gift tax clause is for the protection of federal revenue against tax evasion and the efficient administration of the estate tax.

Oleomargarine Tax as Penalty. In the case of Miller v. Standard Nut

[7] 285 U.S. 312, 1932.

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Margarine Company,[8] the Supreme Court was invited to change its mind as to the essential character of the tax of ten cents per pound levied upon colored oleomargarine and sustained in 1904 in the case of McCray v. United States.[9] This tax, which has been in force since 1902, was held in the McCray case to be "on its face" a revenue measure. It is here urged upon the Court, apparently in reliance upon the doctrine of the Child Labor Tax Case,[10] that the tax is a penalty imposed to eliminate competition with butter, and therefore exceeds the authority of Congress. The Court reaffirmed its earlier decision sustaining the tax without considering the question on its merits. It held, however, that the product made by the complaining company did not fall within the present statutory definition of oleomargarine and was not, therefore, subject to the tax.

II. JUDICIAL POWER

One of the most important cases decided at the present term was that of Crowell v. Benson.[11] The facts involved were as follows: Crowell, who is deputy commissioner of the United States Employee's Compensation Commission, made an award in favor of one Knudsen against Benson under the provisions of the Longshoreman and Harbor Worker's Compensation Act of 1927. The award was based on findings of fact by Crowell that Knudsen was injured while in the employ of Benson, and while performing service upon the navigable waters of the United States. Benson attacked the award on the ground that Knudsen at the time of injury was not in his employ, and therefore not subject to the jurisdiction of the commissioner. In reviewing the proceedings, the federal district court granted a hearing *de novo*, ignoring the findings of fact made by the commissioner and expressing the opinion that the statute would be invalid unless it permitted the court to make its own determinations of fact. That court thereupon found that Knudsen was not in the employ of Benson at the time of the injury, and set aside the award. This decision was upheld by the circuit court of appeals, and the Supreme Court took the case on a *certiorari*. In an opinion by Chief Justice Hughes, with three justices dissenting, the Court affirmed the decisions reached below. The question raised in this somewhat complicated case was this: Is the Longshoreman's Compensation Act invalid unless construed in such a way as to permit a judicial examination *de novo* of all jurisdictional facts forming the basis of an award? The majority answered this question in the affirmative and construed the statute as requiring such judicial review of the commissioner's findings. Chief Justice Hughes' argument rests partly upon due process of law and partly upon the essential nature of the

[8] 284 U.S. 498, 1932. [9] 195 U.S. 27, 1904.
[10] Bailey v. Drexel Furniture Co., 259 U.S. 20, 1922.
[11] 285 U.S. 22, 1932.

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judicial power conferred upon the federal courts by Article III of the Constitution. The opinion runs roughly along the following lines: Congress may validly enact a longshoreman's compensation act. It is further admitted that the jury trial requirements of the Seventh Amendment do not apply to cases governed by maritime law; nor is any denial of due process of law involved in subjecting the rights of parties under the act to determinations made by administrative officers when such determinations are within the scope of the officer's authority. The statute carefully provides for regular and orderly procedure before the commissioner. It is conceded that in many situations calling for the administrative determination of fact, particularly in connection with governmental functions or interests, such determinations of fact made by administrative officers, when supported by evidence, may be made final. This is the rule with respect to many matters in the field of interstate and foreign commerce, taxation, immigration, public lands, public health, the facilities of the post office, pensions, and payments to veterans. In these cases the interest of the individual is more in the nature of a privilege than of a constitutional right. Even with respect to purely private rights, it is permissible to confide the final determination of certain facts to administrative or non-judicial agencies, but certain other facts associated with the constitutional rights of individuals may be designated "jurisdictional" facts, or facts essential to the power of the officer to act. In the present case, the question whether Knudsen was actually in the employ of Benson at the time of injury is just such a question of "jurisdictional" fact. To allow the deputy commissioner final determination of this question would be to permit him to decide a fact upon which his only authority to act under the statute depends, and this, it is strongly implied, would amount to a denial of due process of law. Furthermore, to deny to the federal courts the authority to examine *de novo* all issues of jurisdictional fact would be to deprive them of an essential portion of the judicial power conferred by the Constitution. It is difficult to determine exactly how much reliance Chief Justice Hughes actually places upon the due process clause and how much upon the more elaborately reasoned argument based on the nature of judicial power. But if we are at liberty to assume that due process of law requires the opportunity for a determination *de novo* by a court of law of all jurisdictional facts upon which the authority of our countless administrative agencies at present rests, there is hardly a part of the administrative structure of the federal and state governments which will escape the impact of this decision. The elaborate and thorough work of an enormous number of administrative agencies created for the primary purpose of discovering these facts and acting upon them will be thrown into the discard, and the courts will be overwhelmed by a burden of technical investigation which they are ill equipped from the standpoint either of time or of capacity to perform.

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Justices Stone and Roberts concurred in an elaborate dissenting opinion by Mr. Justice Brandeis. The purport of this opinion is that the Longshoreman's Compensation Act permits a review by the district court of the proceedings before the commissioner on the record. This was intended to mean a review of the record as it actually presents the proceedings before the administrative officer, and not a review based on an entirely new record built up through the examination *de novo* of all the pertinent evidence. Thus interpreted, the statute allows the Court to set aside findings of fact by the commissioner which are unsupported by the evidence and to correct any other procedural irregularities which the record discloses. A power of judicial review of administrative action exercised along these lines has been built up through many years of experience and has proved entirely adequate for the protection of private rights involved. There is no reason grounded in due process of law or in the essential nature of federal judicial power which makes it necessary for the courts to do over again the important work of fact determination which has been performed by the administrative officers.

III. FEDERAL BILL OF RIGHTS

1. Unreasonable Searches and Seizures

In two cases, the Court sharpened its definition of unreasonable searches and seizures forbidden by the Fourth Amendment. In the case of United States v. Lefkowitz,[12] a valid warrant was issued for the arrest of Lefkowitz, and he was apprehended by prohibition agents in his office. At the same time, a thorough search was made of the furnishings of the room, including a desk, towel cabinet, and waste basket, and papers were obtained which the government sought to use as evidence in its prosecution. The Court held that this evidence was secured by unreasonable search. No search warrant had been issued, and there was no claim that the papers were wanted except for use as evidence. "An arrest," said Mr. Justice Butler, "may not be used as a pretext to search for evidence."

In the case of Taylor v. United States,[13] prohibition agents passed Taylor's garage in the night time, smelled the odor of whisky coming from within, and without waiting to secure a warrant broke into the building and discovered liquor stored there. The Court held that the search was undertaken to secure evidence upon the basis of which to arrest and prosecute Taylor, and that such search was invalid without a warrant.

2. Self-incrimination.

In the case of United States v. Murdock,[14] the Court reiterated its well established rule that protection against compulsory self-incrimination may be pleaded only when the threatened incrimination is in the

[12] 285 U.S. 452, 1932.
[13] 286 U.S. 1, 1932.
[14] 284 U.S. 141, 1931.

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same jurisdiction in which the evidence is sought. Murdock was summoned before a federal revenue agent to give information with respect to certain large deductions appearing in his federal income tax returns for payments claimed to have been made to others. He declined to answer, on the ground that he might incriminate himself. He admitted that he had in mind incrimination under the laws of the state, and not under any federal law. The Court held that he was not entitled to immunity from prosecution for failing to give the evidence required. It emphasized that investigations for federal purposes may not be prevented by matters depending upon state law, and that since Murdock did not set up any plea of incrimination under federal law he could not decline to give the evidence for fear of prosecution under state law.

3. Due Process of Law—Procedure

The Supreme Court, speaking through Chief Justice Hughes, upheld the right of the government to impose upon Harry M. Blackmer a fine of $60,000 for contempt of court arising out of his refusal to return to this country from France in order to give evidence in the oil lease prosecutions in which he and his company were involved. This is the case of Blackmer v. United States.[15] After Mr. Blackmer's original failure to appear and testify, Congress enacted a special statute to cover the case. This act provided that whenever at the trial of a criminal action the attendance as a witness of one who is a citizen of the United States, but who is living abroad, is desired, a subpœna may be issued addressed to a consul of the United States, to be served personally upon the witness with an offer of traveling expenses. If the witness fails to appear, the Court may then issue an order requiring him to show cause why he should not be punished for contempt. Personal service of the order upon the witness is required, and if upon the hearing the charge is sustained the Court may adjudge the witness guilty of contempt and impose a fine not exceeding $100,000, which may be satisfied by a seizure of property belonging to him and located within the United States. This procedure was followed in the case of Mr. Blackmer, and the fine of $60,000 imposed by the Court was directed to be collected by a lien upon his property in this country. The Court held that this involved no denial of due process. The employment of the consul as the agent for personal service of the subpœna and the order, while perhaps not falling within the general category of consular duties commonly recognized by international law, certainly violated no rights of the appellant. There is no doubt of the right of the government to punish in its own courts conduct abroad which amounts to a disobedience of its laws, nor can it be doubted that the United States "possesses the power inherent in sovereignty to require the return to this

[15] 284 U.S. 421, 1932.

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country of a citizen, resident elsewhere, whenever the public interest requires it, and to penalize him in case of refusal." This penalty may take the form of a fine imposed for contempt of court. There is no merit in the contention that since the offense is a criminal one it is a violation of due process of law to conduct the hearing and render judgment while the defendant is absent. Contempt proceedings have long been held not to be criminal prosecutions within the meaning of the Sixth Amendment. They are regarded as *sui generis*, and all that due process of law requires with respect to them is suitable notice and an adequate opportunity to appear and be heard. The Court also rejected the argument that the statute created an unreasonable classification by declaring that Blackmer's liability is created by reason of his disobedience to the order of the Court and not because of his ownership of property from which the fine may be collected. Nor does the Court find any virtue in the argument that the seizure of property in satisfaction of the fine is an unreasonable seizure within the terms of the Fourth Amendment.

B. QUESTIONS OF STATE POWER

I. STATE APPORTIONMENT OF SEATS IN CONGRESS

In three cases coming up from Minnesota,[16] Missouri,[17] and New York,[18] the question was presented to the Court for the first time as to whether the creation by a state legislature of new congressional districts after a decennial census is an act of state legislation in which the state governor has his customary share. In the Minnesota and Missouri cases, the state governor had vetoed the apportionment acts and they had not been repassed over his veto. In New York, the reapportionment had been effected by a concurrent resolution which had not been sent to the governor at all. Could these three apportionment measures be put into effect under the circumstances? In each case the Supreme Court unanimously decided that they could not. The major opinion appears in the Minnesota case, in which Chief Justice Hughes speaks for the Court. The Constitution of the United States provides in Article I, sec. 4: "The time, places, and manner of holding elections for senators and representatives shall be prescribed by each state by the legislature thereof; . . ." The crucial question is whether this clause confers upon the legislatures of the several states the right to exercise, in matters of apportionment, their regular legislative power or whether it contemplates special non-legislative action by the state legislatures similar in character to the function performed by the legislature in ratifying a federal amendment. The Court decides that

[16] Smiley v. Holm, 285 U.S. 355, 1932.
[17] Carroll v. Becker, 285 U.S. 380, 1932.
[18] Koenig v. Flynn, 285 U.S. 375, 1932.

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normal state legislative action is here contemplated. This view is supported by the following considerations. First, the subject-matter of action by the legislature, that is, the time, places, and manner of holding elections, seems to call for the operation of the law-making process. Under this grant, it becomes incumbent upon the state to enact an elaborate code of law with respect to congressional elections. It is unreasonable to assume that this was intended to be done by any process other than the normal procedure for the passing of statutes. Secondly, the constitutional provision quoted goes on to provide that "the Congress may at any time by law make or alter such regulations." This, in the opinion of the Court, seems to assume that the regulations themselves have already been enacted by law. Furthermore, it has been the consistent and long-continued practice of the states to enact their congressional apportionment measures in the form of ordinary statutes. It is apparent from the federal apportionment act of 1911 that Congress has taken the same point of view. In that statute, Congress authorized the states to create new congressional districts "in the manner provided by the laws thereof," and the Supreme Court held in the case of Ohio *ex rel.* Davis v. Hildebrant[19] that the Ohio state apportionment statute could properly be subjected to state-wide referendum just as any other state statute could be. It follows from this reasoning that none of the three state apportionment measures presented to the Court became effective. This left open the question as to how representatives should be chosen from these three states in the then imminent congressional election of 1932. The Court answered this in the only possible way. Since Minnesota and Missouri had both lost representatives under the apportionment based on the 1930 census, all representatives from those states had to be elected at large, since the former districting arrangements could no longer be used. In the state of New York, which had gained two representatives, the old congressional districts were to be used and the two additional representatives were to be chosen at large.

II. FOURTEENTH AMENDMENT

1. Due Process of Law

Due Process of Law and the Police Power. Three cases presented problems involving state police power under the due process clause of the Fourteenth Amendment. In Sproles v. Binford,[20] the Court sustained a Texas statute limiting to seven thousand pounds the loads of vehicles using the highways, and imposing certain restrictions of width, height, and length. This was held to be a reasonable protection of the state's highways, involving neither denial of due process nor a burden upon interstate commerce. Various exemptions set up in the act were held reason-

[19] 241 U.S. 565, 1916.

[20] 286 U.S. 374, 1932.

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able and free from attack under the equal protection of the laws clause.

In Hodge Drive-it-Yourself Company v. Cincinnati,[21] it was held valid under the due process clause to require all those maintaining driverless automobiles for hire to pay license fees and to deposit with the city treasurer insurance policies or bonds in specified sums for the protection of persons or property injured through the negligent operation of the vehicles by those who hired them. These are reasonable conditions for the use of the city streets as a place for carrying on a private business. The insurance and bond provision is held not to impose liability without fault, but merely to require security that those renting the vehicles shall respond in damage for their own torts.

A Utah statute forbade the display of advertisements for cigarettes or tobacco on bill-boards, street car placards, and other public places, while permitting the same type of advertising in newspapers and periodicals circulating throughout the state. The prohibition against the bill-board and display advertising was held in Packer Corporation v. Utah[22] to be a reasonable exercise of the state's police power, since the state could validly forbid the sale of cigarettes and tobacco completely. The exemption from the penalities of the act of newspaper and magazine advertising is held not an arbitrary classification, since it has been held by the Supreme Court that the state could not forbid such advertising in papers or journals moving in interstate commerce. The present statute does not burden interstate commerce, since its provisions are directed to the local use of advertising material rather than its transportation into the state.

Due Process of Law and Public Utilities. The case of New State Ice Company v. Liebman[23] involved the validity of an Oklahoma statute of 1925 declaring the manufacture, sale, and distribution of ice to be a public business and requiring those engaged in it to secure a state license. A majority of the Court held the act invalid on the ground that it subjects a purely private business to restrictions which may be imposed only on businesses affected with a public interest. A review of previous decisions leads the Court to conclude that the business of making and distributing ice has none of the orthodox characteristics of a public calling; nor is it, like irrigation or mining, intimately related to the basic economic life of the state. It is not, Mr. Justice Sutherland points out, essentially different in character from the business of producing and selling milk or any other commodity of general consumption. The state regulation set up cannot be defended as a bar to monopoly, since it definitely fosters monopoly in the ice business itself. A vigorous dissenting opinion is written by Mr. Justice Brandeis and concurred in by Mr. Justice Stone. He emphasizes the vital dependence of modern communities upon an adequate supply

[21] 284 U.S. 335, 1932.
[22] 285 U.S. 105, 1932
[23] 285 U.S. 262, 1932.

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of ice at a reasonable price and urges that the ice business is peculiarly susceptible to monopoly. The present statute is a reasonable exercise of the state's police power designed to protect the state against these well known abuses. He presents his own view with respect to the nature of a business affected with the public interest in the following striking paragraph: "The notion of a distinct category of business 'affected with public interest,' employing property 'devoted to a public use,' rests upon historical error. . . . In my opinion, the true principle is that the state's power extends to every regulation of any business reasonably required and appropriate for the public protection. I find in the due process clause no other limitation upon the character or the scope of regulation permissible." He concludes his opinion with a warning of the great dangers which may result from judicial restrictions which deny to the states their freedom to experiment with the vital present-day problems affecting economic and social life.

Two state statutes designed to prevent the wasteful production of gas were sustained in unanimous opinions. In Bandini Petroleum Company v. Superior Court,[24] it was held reasonable to forbid as unreasonable waste the production of natural gas which has been allowed to come to the surface without its lifting power having been utilized to produce the greatest quantity of oil in proportion, and also to make "the blowing, release, or escape of natural gas into the air *prima facie* evidence of unreasonable waste." The restriction of gas output where oil is not at the same time efficiently produced not only is a desirable protection of the state's interest in its natural resources, but is more specifically a protection of the correlative rights of surface owners with respect to a common supply of oil and gas. In Champlain Refining Company v. Corporation Commission,[25] the Court sustained an elaborate series of orders issued by the Commission definitely limiting the number of barrels of crude oil to be taken from certain Oklahoma oil fields. The plaintiff corporation was restricted in one field to about six per cent of the total production of its wells and to a substantial reduction in the other. These orders are found not to have been made for the purpose of fixing the price of crude oil, nor did they have that effect; but it was clear that if the plaintiff were allowed to take all of the flow of its wells there would result inevitably great physical waste in view of the early depletion of natural gas pressure and the diminution in the quantity of crude oil which could ultimately be recovered. The Court found, however, that the penal sections of the act were wanting in due process, in view of the vague definition of the offenses created.

Due Process of Law and State Taxation. In Hoeper v. Tax Commis-

[24] 284 U.S. 8, 1931.
[25] 286 U.S. 210, 1932.

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sion,[26] it was held that the state of Wisconsin could not impose upon a husband a tax computed on the combined total of his own and his wife's income. The laws of the state recognize the individual property and earnings of married women. They are not the property and earnings of the husband; nor does he have control over them. To impose upon him a tax measured in part by his wife's income is to deprive him of property without due process of law. Mr. Justice Holmes dissented on the ground that the state legislature has not lost its power to determine what the consequences of marriage shall be and that the liability to tax created by this statute is one of them.

The right of the state to impose a tax upon the income earned by one of its citizens in business conducted outside of the state is upheld in Lawrence v. State Tax Commission.[27] The Court said: "The tax, which is apportioned to the ability of the taxpayer to bear it, is founded upon the protection afforded to the recipient of the income by the state, in his person, in his right to receive the income, and in his enjoyment of it when received. These are rights and privileges incident to his domicile in the state. . . ."

Extending the general doctrine embodied in the Farmers Loan and Trust Company v. Minnesota,[28] the Court held in First National Bank v. Maine[29] that the state of Maine cannot consistently with due process of law impose a tax upon a transfer by death of shares of stock in a corporation chartered by the state when those shares are part of the estate of a decedent whose domicile was in Massachusetts. This general rule recently devised by the Court to prevent double taxation has been held to apply to bonds, notes, and bank credits. The Court sees no reason for not extending the rule to shares of corporate stock. Mr. Justice Stone dissents in an opinion concurred in by Justices Holmes and Brandeis urging that the nature and extent of the decedent's interest in the shares of stock are determined by the laws of Maine under which the corporation is chartered, and that that state should therefore be allowed to tax the transfer. The dissenting justices do not share the majority's horror of double taxation.

Due Process in Procedure. No denial of due process of law is involved in a Minnesota statute requiring the determination by the process of arbitration of the amount of loss suffered under fire insurance policies. Reasonable protection is set up against arbitral awards which are grossly excessive, inadequate, or procured by fraud. There is no ground for holding this procedure to be arbitrary or subversive of the rights of parties. This is the case of Hardware Dealers Mutual Fire Insurance Company of Wisconsin v. Glidden Company.[30]

[26] 284 U.S. 206, 1931.
[27] 286 U.S. 276, 1932.
[28] 280 U.S. 204, 1930. For comment, see this REVIEW, vol 25, p. 90.
[29] 284 U.S. 312, 1932.
[30] 284 U.S. 151, 1931.

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2. Equal Protection of the Laws

Texas Primary Statute—Exclusion of Negroes. In 1923, the legislature of Texas passed an act declaring that no negro should be eligible to vote in a Democratic primary election. This statute was held in Nixon v. Herndon[31] to be invalid as a denial of the equal protection of the law. Upon the announcement of this decision, the legislature of Texas repealed the invalid provision and replaced it by the following article: "Every political party in this state through its state executive committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party." The state executive committee of the Democratic party, acting under the new statute, adopted a resolution "that all white Democrats who are qualified under the constitution and laws of Texas, and who subscribe to the statutory pledge provided in Article 3110 Revised Civil Statutes of Texas and none other, be allowed to participate in the primary elections to be held July 28, 1928, and August 25, 1928." Nixon, who had successfully attacked the validity of the earlier statute, was barred from voting in the 1928 primary because of his color and sought damages in the present case of Nixon v. Condon.[32] Speaking through Mr. Justice Cardozo, a majority of the Court upheld his claim on the ground that the new statute, like its predecessor, denied him the equal protection of the laws. This conclusion rests on the following argument: The state convention of a state political party has whatever inherent power the party enjoys to determine party membership. Power to determine voting privileges in a party primary would not belong to the state executive committee of the party unless that power were definitely granted to it either by the state convention or by law. The Democratic state convention in Texas has given to the state executive committee of the party no power to exclude negroes from the party primaries. The power they have exercised in doing so comes to them from the statute passed by the legislature and from no other source. Consequently, the statute has made the state executive committee the agent of the state legislature in determining suffrage qualifications for primary elections. The discrimination against negroes is therefore attributable to this authority derived from the statute, is therefore discrimination issuing from state law, and is consequently a denial by the state of the equal protection of the laws. Justices McReynolds, VanDevanter, Sutherland, and Butler dissented in an opinion by Mr. Justice McReynolds, the purport of which is that the state executive committee is in no sense acting as the agent of the state of Texas in the present case, but as the agent of a political party which is essentially a private organization. Such a party

[31] 273 U.S. 536, 1927. See comment in this REVIEW, vol. 22 p. 90.
[32] 286 U.S. 73, 1932.

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is at liberty to exclude from its membership such persons as it wishes to exclude. "The state may not interfere. White men may organize; blacks may do likewise. A woman's party may exclude males. This much is essential to free government."

In view of the issue drawn between the majority and minority in this case, it would appear that the next step for the legislature of Texas to take, if it wishes to persist in its efforts to exclude negroes from primary elections, would be to repeal all legislation on the subject, on the implied understanding that the state party itself could go ahead and do, without sanction of law, what it is here forbidden to do because that sanction was specifically given. This would at least bring squarely to the Court the question whether a political party acting entirely on its own initiative may exclude negroes from its primary elections.[33]

3. State and Federal Relations

State Police Power in Interstate Commerce. If there has been any doubt as to the continued life and vitality of the Webb-Kenyon Act, that doubt is laid at rest by the unanimous opinion of the Supreme Court in the case of McCormick & Company v. Brown.[34] Invoking the authority of that act, the state of West Virginia imposed penalties for bringing liquor into its borders in violation of its laws, even when the manufacture and transportation of the liquor was not forbidden by the Volstead Act. The liquor in question was denatured alcohol. The Court sustained the authority of the state. Chief Justice Hughes said: "The appellants do not urge, and there would be no ground for such a contention, that either the Eighteenth Amendment or the National Prohibition Act had the effect of repealing the Webb-Kenyon Act. The Congress has not expressly repealed that act, and there is no basis for an implication of repeal." Nor is the state forbidden to impose more rigorous restrictions upon the sale of alcoholic liquors than are imposed by the National Prohibition Act.

There is no unconstitutional interference with interstate commerce involved in making a state workman's compensation act applicable to the personal injuries sustained by the employee of an interstate railroad who at the time of his injury was engaged exclusively in intrastate commerce. This is the case of Boston & Maine R. Company v. Armburg.[35]

[33] The application of the equal protection clause to state taxation was involved in two cases. Cumberland Coal Co. v. Board of Revision, 284 U.S. 23, 1931, upheld against a charge of arbitrary classification a tax levied upon coal lands. Iowa-Des Moines National Bank v. Bennett, 284 U.S. 239, 1931, invalidates certain state taxes as discriminating against the shares of national banks.

[34] 286 U.S. 131, 1932.

[35] 285 U.S. 234, 1932. Continental Baking Co. v. Woodring, 286 U.S. 352, 1932, upholds a state tax upon motor carriers against the claim that it burdens interstate commerce and denies due process of law.

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State Taxation and Interstate Commerce. In three cases, attempts to secure immunity from state taxation of local transactions because of an alleged burden upon interstate commerce were unsuccessful. In Eastern Air Transport v. South Carolina Tax Commission,[36] a non-discriminatory state tax on the sale of gasoline for use by interstate air transport lines was held valid on the ground that the sale of the gasoline was still a purely local transaction. In Utah Power and Light Company v. Pfost,[37] a license tax measured by kilowatt hours was imposed upon corporations generating electricity in the state. The plaintiff urged that the process of generating electricity is not physically separable from the process of transmitting the power, and that since much of its power was transmitted beyond state lines, the tax was a direct burden upon interstate commerce. The Court was unimpressed by this technical argument and held that there was a discernible practical distinction between the generation of power, which is a local process, and the transmission of the power across state lines, which is interstate commerce. The present tax falls exclusively upon the former, and is therefore valid. Nor is a burden upon interstate commerce imposed by a state tax upon gasoline brought into a state and stored there for local use when the same tax is imposed upon all other gasoline sold or used in the state. This is the case of Gregg Dyeing Company v. Query.[38]

On the other hand, a Mississippi tax in the form of a privilege tax imposed on a foreign corporation selling to distributors in Mississippi natural gas which has been piped in from outside the state does impose a burden upon interstate commerce. The transactions engaged in by the corporation are all incident to the interstate transportation of the gas. This is the case of State Tax Commission v. Interstate Natural Gas Company.[39]

State Taxation of Federal Instrumentalities. A frank reversal of opinion upon an important constitutional question is announced by the Supreme Court in the case of Fox Film Corporation v. Doyal.[40] It will be recalled that in the case of Long v. Rockwood[41] the Court, by a five to four decision, held that state income taxes could not validly be collected upon income in the form of royalties derived from federal patents. By identical reasoning, the same result obviously followed with respect to royalties from federal copyrights. The theory upon which the majority opinion rested was that the federal patent was a privilege granted by the government, and that the state could not validly diminish the pecuniary value of the privilege by the tax in question. In the present case, the court bluntly repudiates this view and announces that the mere fact that a federal copy-

[36] 285 U.S. 147, 1932.
[37] 286 U.S. 165, 1932.
[38] 286 U.S. 472, 1932.
[39] 284 U.S. 41, 1931.
[40] 286 U.S. 123, 1932.
[41] 277 U.S. 142, 1928. See comment in this REVIEW, vol. 23, p. 100.

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right is property derived from a grant by the United States is no valid reason for exempting it from state taxation. The property right which is created by the government does not belong to the government, but is immediately transferred to private ownership. The copyright is not a franchise or privilege to be exercised on behalf of the government or in performing a governmental function. The government as such has, therefore, no interest in keeping it free from state taxation. Chief Justice Hughes concludes his opinion with the statement: "The affirmance of the judgment in the instant case cannot be reconciled with the decision in Long v. Rockwood upon which the appellant relies, and in view of the conclusions now reached upon a reëxamination of the question, that case is definitely overruled." It is interesting to note that this is the opinion of a unanimous court.

III. CONTRACT CLAUSE

In Coombes v. Getz,[42] it was held that an impairment of the obligation of contracts had been effected by a state law which relieved directors and trustees of corporations of their personal liability to creditors and stock holders for monies embezzled or misappropriated by the officers of the corporation. This liability was deemed part of the contract in the terms of which the rights of creditors and stockholders must be defined. On the other hand, there is no impairment of the obligation of contracts resulting from a statute which increases the liability of a corporate shareholder of a bank for the losses of the bank after the purchase of the stock. In this case, the shareholder's original liability was limited to the sale of his shares at auction, whereas under the new statute he is made personally liable in a suit at law for any deficiency. It is held that the original liability was not exclusive, and that the new provision merely recognizes a liability long known to the common law. This is the case of Shriver v. Woodbine Savings Bank.[43]

[42] 285 U.S. 434, 1932.

[43] 285 U.S. 467, 1932. Pacific Company v. Johnson, 285 U.S. 480, 1932, holds that there is no impairment of the obligation of contract in using as a basis for a corporate franchise tax the entire net income of the corporation, including the income from tax-exempt municipal bonds, as long as such income is not the subject of any discrimination. The case is distinguished on none too substantial grounds from the case of Macallen Company v. Massachusetts, 279 U.S. 620, 1929 (for comment, see this REVIEW, vol. 24, p. 102), and three justices dissented on the authority and reasoning of the earlier case.

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Minnesota's Congressional Election at Large. On November 8, 1932, Minnesota, for the first time in her history, chose Democratic presidential electors. The breach in the ranks of the Solid South in 1928 was hardly more of a break with tradition. That, however, was not the only interesting feature of the recent election. In the first place, all nine of the state's representatives in Congress were elected at large. That alone would not confer any great distinction, but the importance of an election at large was magnified in the present case by the fact that Minnesota is the only state in the Union in which a genuine three-party system prevails. The third party, or Farmer-Labor party is in this instance not only a factor in state politics, but at present the dominant one.

The interest in this election goes back to the reapportionment act passed by Congress on June 18, 1929,[1] which reduced Minnesota's representation from ten to nine. This necessitated redistricting the state. Accordingly, the state legislature, in April, 1931, in the closing days of its biennial session, passed a bill, known as House File No. 1456,[2] which divided the state into nine districts, specifying the counties and parts of counties to be contained in each district. The bill was presented to Governor Floyd B. Olson on April 20, and he vetoed it and returned it to the house on the same day, his objections being that the bill was a gerrymander, effecting an inequitable distribution of the state's representatives.

There can be little question that the bill was a gerrymander. The population of the proposed districts ranged from 228,596 to 344,500, and they were not composed of "compact, contiguous territory."[3] The seventh district, for example, almost cut the state in half. Beginning on the South Dakota boundary, it embraced a large farming territory in the western part of the state, and then extended a long finger to the eastward a distance of nearly 175 miles, to include a single ward of the city of Minneapolis. Hennepin county—the county in which Minneapolis is situated—with a population of 517,785, was divided among three districts. The major portion of the county was constricted into one large district containing 344,500 inhabitants, and the remainder was divided between two districts that were largely rural. The result probably would have been to give the county a single representative.

The legislature which effected this gerrymander was predominantly rural and Republican. The obvious purpose was to increase the representation of the rural part of the state over that of the urban, and to favor the Republican party at the expense of the Farmer-Labor party. It is

[1] 2 U.S.C.A., § 2a.
[2] *Laws, Minn.*, 1931, p. 640.
[3] See map, *Minn. Yearbook*, 1931, p. 19.

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little wonder that Governor Olson, who is a Farmer-Laborite and a resident of Minneapolis, refused to sign the bill. His veto was well founded in justice and propriety, as well as in political considerations. Even the *Minneapolis Journal* and the *Minneapolis Tribune*, both staunchly Republican, and usually not friendly to the governor, commended his action. The *Journal*, in an editorial, referred to the proposed districting plan as "the rankest gerrymander scheme ever conceived by a Minnesota legislature," and added that "the purpose is to disfranchise, so far as any voice in Congress is concerned, three Minneapolis wards plus the purpose to lump as many Farmer-Labor voters as possible into a single congressional district, in order to nullify that party's power in other districts."[4]

The proponents of the bill were not strong enough to pass it over the governor's veto, but they were unwilling to admit defeat. Without further joint action by the house and senate, but by resolution of the house,[5] the measure was deposited with the secretary of state, "to become and remain part of the permanent records of the secretary of state." It was pointed out that the federal Constitution[6] provides that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof," and that the constitution of Minnesota[7] defines the legislature as consisting of the senate and the house of representatives, the governor not being included. Therefore, it was argued, redistricting is purely a function of the legislature, in which the governor does not participate.

In accordance with the house resolution, the secretary of state began to accept filings for nominations from the new districts, and refused to accept filings from candidates at large. One W. Yale Smiley, acting as a "citizen, elector, and taxpayer," then petitioned the district court in Ramsey county for a writ of *mandamus* to compel the secretary of state to accept his filing at large. The petition was denied, and the state supreme court,[8] on appeal, sustained the decision of the court below, upholding the contention that the legislature, in districting the state, was not performing a law-making function, but merely discharging a particular duty in the particular manner required of it by the federal Constitution. Though the state had been districted seven times before, and in each case the governor had participated as in ordinary law-making, the court held that his participation was not necessary to the validity of the acts.

Appeal was then taken to the Supreme Court of the United States,[9] where the decision of the state court was reversed. Mr. Chief Justice

[4] Apr. 21, 1931, p. 18.
[5] *Laws, Minn.*, 1931, p. 640.
[6] Art. I, sec. 4.
[7] Art. IV, sec. 1.
[8] State *ex rel.* Smiley v. Holm, 238 N.W. 494.
[9] Smiley v. Holm, 285 U.S. 355.

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Hughes, speaking for the Court, held that the federal Constitution, in providing that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof," means that this shall be done in the regular legislative or law-making manner. In part, he said: "We find no suggestion in the federal constitutional provision of an attempt to endow the legislature of the state with power to enact laws in any manner other than that in which the constitution of the state has provided that laws shall be enacted. Whether the governor of the state, through the veto power, shall have a part in the making of state laws is a matter of state polity." Since the Minnesota constitution[10] provides that before a bill becomes a law it must be presented to the governor for his signature, and if vetoed by him, it must be repassed by two-thirds of both houses, this had the effect of nullifying the redistricting act of the Minnesota legislature.

The Court refused to answer directly the question whether the congressional act of 1911,[11] providing that representatives shall "be elected by districts composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants," had been entirely repealed and superseded by the act of 1929, holding that this was not germane to the case.[12] Referring to the question which had been raised as to the method of electing representatives in case the act failed, the Chief Justice said: "It follows that in such a case, unless and until new districts are created, all representatives allotted to the state must be elected by the state at large." The legislature was not scheduled to meet again until January, 1933, and the governor declined to call a special session. Hence there was no opportunity to pass a new districting act.

An unprecedented scramble for nominations followed the Court's decision. In all, eighty-eight candidates entered the lists.[13] The primaries, of course, eliminated all but nine of each party. Three Communist candidates were then nominated by petition. Thus, thirty aspirants were presented to the voter, on the office-column type of ballot, and he was asked to choose nine of them. The results were not entirely what might have been expected from election at large. It is often assumed that the great majority of voters will vote a straight ticket, which would have the effect of giving all of the seats to the dominant party, but such was not the case here. When the smoke cleared, it was found that the three leading parties had polled a total of 7,746,319 votes,[14] divided as follows: Farmer-Labor, 2,939,373; Republican 2,859,558; Democratic, 1,947,388. The Farmer-

[10] Art. IV, sec. 11.

[11] 37 Stat. 13, c. 5.

[12] The Court has recently held that this part of the act of 1911 applied expressly to the reapportionment following the 13th census, and hence does not apply to that following the 15th census (Wood v. Broom, 53 S. Ct. 1).

[13] For list, with biographical sketches, see *Minn. Journal*, June 12, 1932.

[14] The three Communist candidates received a total of 34,799 votes.

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Laborites, with 38 per cent of the votes, had captured five of the nine seats, while the Republicans, with 37 per cent, secured only three seats, and the Democrats, with 25 per cent, got the remaining place. Thus, in a very crude way, something approaching proportional representation was achieved. It probably would have been more nearly proportional but for the fact that one of the Republicans who was defeated in the primaries appeared again in the general election as a 'sticker' candidate; hence the Republican vote was divided between ten candidates instead of nine.

The congressional vote was relatively light. If we divide the total vote by the number of seats to be filled, we get 865,002, a figure more than 165,000 short of the gubernatorial vote. Perhaps there was more interest in the gubernatorial race, but one probable explanation is that many voters did not feel equal to the task of choosing nine representatives, and voted only for the three or four candidates whose names were most familiar to them. That many split ballots were cast is made evident by comparing the votes of some of the candidates. For example, the Farmer-Labor candidate for the governorship secured 135,822 more votes than the leading Farmer-Laborite in the congressional list, while the leading Democrat in the congressional race polled nearly twice as many votes as the Democratic gubernatorial nominee. The heavy vote for Roosevelt, who led Hoover by a margin of 236,847, is explained by the fact that most of the Farmer-Laborites supported the Democratic nominee.

If the distribution of representatives among the three parties was roughly proportional, the same can scarcely be said of the territorial distribution. If we divide the state equally between north and south, it will be found that not one of the newly elected representatives lives in the northern half. Thirty-one counties, forming a solid block, constituting considerably more than half the territory of the state, and containing more than a quarter of its total population, are left entirely without representation. It is not surprising that most of the representatives should come from the southern part of the state, as the population is heavily concentrated there. It might be expected, however, that Minneapolis and Saint Paul would furnish a number greater than their population would seem to warrant. Yet this was not the case. Minneapolis supplied two and Saint Paul none. These two cities, constituting a single metropolitan area of nearly 750,000 inhabitants, will have only two representatives. Only one of the other successful contestants lives in a city of more than 10,000, and four are from communities of 2,000 or less. Thus, it would appear that the urban population was no more successful in securing representation in the at-large election than it would have been under the redistricting plan.

Of some significance is the fact that of the nine incumbents who were candidates for reëlection, only two were successful. Eight of those who

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sought to be returned were Republicans and one a Farmer-Laborite. The Farmer-Laborite was reëlected, but only one of the eight Republicans was returned, and he was last in the list of those chosen. This was in keeping with the general tendency throughout the country to repudiate Republican office-holders. Yet some further explanation seems necessary. The fact that the Republicans, though they secured three seats, returned only one of their present incumbents, suggests the possibility that most of the representatives elected under the district system were not sufficiently known throughout the state to command a large state-wide vote, but were largely dependent upon purely local reputations and local constituencies. The at-large plan seems to have brought about the choice of a greater number of well-known men, whether they are of higher caliber or not. For instance, among those elected, we find Magnus Johnson, former United States senator, Theodore Christianson, former governor, Henry Arens, present lieutenant-governor, Einar Hoidale, Democratic nominee for the United States Senate in 1930, and R. P. Chase, state auditor for eight years and Republican nominee for governor in 1930.

Another feature which added some piquancy and popular interest to the campaign was the fact that F. H. Shoemaker, one of the successful candidates, has served a term in a federal prison for sending defamatory matter through the mails.[15] According to the constitution of Minnesota,[16] no person who has been convicted of a felony may vote or be elected to office in the state. Shoemaker's seat is likely to be contested on this ground, but it is doubtful whether the Minnesota constitutional provision will control the decision. The federal Constitution fixes the qualifications for representatives, and makes each house of Congress judge of the qualifications of its own members. Therefore, this question must, apparently, be decided by the House itself, and cannot be settled until the new Congress meets. If Shoemaker is not seated, then another interesting question will arise. Will the candidate next in order—that is, the man with the tenth highest vote in the recent contest—be declared elected, or will a special election be held to fill the vacancy?

The people of Minnesota view the results of the election calmly enough, but are not especially well pleased. Some are disgusted with the election of Shoemaker, and feel that it could not have happened under the district system. The legislature will take up the problem of districting again soon, but the outcome is uncertain. Since all of the newly elected members are concentrated in a relatively small territory, it would be almost impossible to divide the state in such a manner as to give each member a district. Thus any redistricting plan is likely to meet formidable opposition. The Farmer-Laborites gained most from election at large, and they

[15] See biographical sketch, *Minn. Journal*, June 12, 1932.
[16] Art. VII, sec. 2.

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may be reluctant to change. Through the governor's veto, they will still be in position to block any plan that may be proposed, though apparently they will not have sufficient strength in the legislature to force through a plan of their own if the Republicans unite in opposing it. Compromise, of course, would be the logical solution, but that will not be easy. Some observers are predicting that Minnesota will again elect her representatives at large in 1934, not by preference, but because of failure to agree upon a new districting plan.

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The Bureau of Publicity of the Democratic National Committee, 1930–32. An earlier note in the REVIEW indicated the desirability of minority party activity in the interval between campaigns and appraised the organization and functioning of the publicity bureau of the Democratic national committee from June 1, 1929, until September 1, 1930.[1] During the period from September, 1930, to the convening of the Democratic national convention on June 27, 1932, the bureau continued, as a party agency, to criticise the policies of the Hoover administration and to assume, in a limited degree, the educational function of the minority party. In addition, it was necessary during the first session of the Seventy-second Congress to explain and justify the work of the Democratic House of Representatives.

The bureau remained under the direction of Mr. Charles Michelson, and as a constituent part of the organized activities of the executive committee of the national committee. In the first year and a half after its formation, the work of the bureau was confined chiefly to issuing numerous statements, most of which were signed by leading Democratic members of Congress, and which dealt in a highly critical manner with the majority party program and with President Hoover.[2] This phase of publicity was continued, and an uninterrupted stream flowed from the headquarters, in the customary form of releases. A total of 504 statements, including clip sheets, were issued during a period of approximately 22 months. The names of 76 individuals appeared in connection with 344 of the statements. Fifty-three Democratic representatives and senators made contributions; the remainder were well-known party leaders outside of Congress. Among others, Senators Robinson, Hull, and Harrison

[1] February, 1931, pp. 69–73.

[2] "The distribution of statements by conspicuous Democrats by the Democratic publicity bureau has attempted," said Jouett Shouse, "to place before the people of this country the errors, inconsistencies, and contradictions of the Hoover administration" (*New York Times*, August 26, 1930). In a radio address on September 29, 1930, Mr. Michelson frankly stated that the purpose of the bureau was to present the Democratic side of things, and that under these circumstances, the President naturally came under fire (*Ibid.*, September 30, 1930).

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discussed various phases of the tariff, while Speaker Garner and Representatives Rainey, Byrns, and McDuffie treated fiscal and taxation issues. The offensive against the policies of the Farm Board was conducted by a score or more of senators and representatives. The chairman of the executive committee, Mr. Jouett Shouse, and the vice-chairman of the Democratic national committee, Mrs. Nellie T. Ross, were exceedingly active. Eighty-five releases contained speeches and comments by the former, and forty-six releases by the latter.

The customary methods of distribution were continued. Press associations, news agencies, and daily and weekly newspapers received the releases, as well as numerous national and state party committeemen and women. Weekly clip sheets, prepared editorials, and news letters were periodically made available. The use of the radio was greatly extended, and most of the important addresses under the auspices of the bureau had a national broadcast.

The subjects treated in the various statements, of course, concerned political and governmental matters of current interest and significance. The director displayed characteristic skill in the selection of pertinent material. In addition, such matters as the congressional elections of 1930 and the subsequent special elections were considered from an obviously partisan point of view, while much space was devoted to the organized activity of the party, financial and otherwise, in preparation for the campaign of 1932.

Of national issues, the tariff was most frequently discussed. Approximately one-fifth of the releases dealt with it, and in most of them the Republican policy was frankly challenged with devastating criticisms of the results of the Hawley-Smoot tariff of 1930. Farm relief, the operations of the Farm Board, fiscal policy, taxation, and the various plans for unemployment relief received rather complete publicity. Little time and attention were devoted to replying to the charges made by Republican spokesmen.

Whatever may have been the form, the basic purpose of the bureau was to conduct its campaign on the issue of the alleged failure of the Hoover administration to put into effect the program on which it obtained election in 1928. The continuation of unsatisfactory economic conditions and the apparently rapid change of sentiment with reference to national prohibition furnished abundant opportunity for critical examination of the majority party and its leadership.

In addition to the propaganda function, the bureau served with great effectiveness as an agency for the general exchange of ideas and opinions concerning party affairs. Current events and conditions were kept constantly before the public. During the campaign for the presidential nomination, the bureau maintained an attitude of neutrality, as well as

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abstaining from any interference with state primaries for the selection of senatorial or congressional nominees.[3]

One of the most interesting phases of the work of the bureau was in connection with the development of a more efficient party organization. Few persons realize that after the 1924 campaign the Democratic party had no headquarters and there was very little activity and publicity concerning it. The party entered the 1928 campaign seriously handicapped in many states and counties where the organization was little more than a form. Subsequent to the defeat, disintegration continued in many localities. From 1929 to the present, however, the national headquarters in Washington coöperated in every way with state organizations and leaders. Several months before the national convention, Democratic headquarters were open and functioning in nearly half of the states of the Union. Suggestions and assistance have been given these state groups by the headquarters, and an effort made to coördinate their activity.

Both Mr. Shouse and Mrs. Ross, the latter in charge of the women's division, separately visited practically every state and addressed scores of meetings. Their speeches were broadcast, and widespread publicity resulted. The bureau diligently labored to impress upon the public the fact that the Democratic party had assumed an aggressive position in attempting what had been called "the double purpose of educating the electorate and affording some proper understanding of the Democratic point of view." Every item concerning the party's activity was systematically and favorably exploited.

Skeptics who criticized the practices of party publicity agencies and questioned whether voters were actually convinced by the propaganda so lavishly issued perhaps failed to appreciate that, so far as the Democratic party is concerned, the other functions of the committee have thoroughly justified its organization and continuance.[4] It is, of course, true that economic conditions assisted the Democrats and kept the opposition on the defensive.

The future of the bureau remains a matter of speculation. Subsequent to the 1932 convention, Mr. Shouse resigned the chairmanship of the executive committee. The director of publicity remained and assisted materially in the publicity work of the campaign. The return of the Democratic party to power in both the legislative and executive branches of the government will necessitate the abandonment of the rôle of critic, and the substitution of the rôle of special pleader for the program of the new administration.

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[3] There were some charges that Mr. Raskob and Mr. Shouse opposed the nomination of Governor Roosevelt, but there is no evidence that their personal predilections influenced the official policy of the bureau.

[4] For a critical appraisal of the methods and results of publicity bureaus, see quotations of F. R. Kent in *Editor and Publisher*, August 20, 1932.

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The Initiative and Referendum in Arkansas Come of Age. After a heated campaign, in which William J. Bryan took part, the initiative and referendum were adopted by Arkansas in 1910. The measure, known as Amendment No. 10, was taken bodily from the Oregon provision, with a clause added for the purpose of making it usable in local elections. The adoption was due to dissatisfaction with the legislature, both because it passed some very objectionable laws and because it refused to pass other measures which many people thought essential for a progressive state.

In the first election following adoption, the people prepared to make use of the new toy. Three proposed amendments were filed with the secretary of state. The legislature had also proposed two. Four general acts, one by the referendum and three by petition, were to be voted on. In addition, an effort was made to get several local measures on the ballot, such as legalizing Sunday baseball in Little Rock and betting on horse races in Hot Springs, but the supreme court held that the phrase "each county and each municipality" had been "inaptly thrust into the original amendment . . . in a way that expresses nothing and means nothing,"[1] and the effort came to naught. The amendment allowing cities to issue bonds, initiated by petition, received a majority of the vote cast on it, but the supreme court held that a constitutional provision of 1874, limiting the number of amendments submitted at any one time to three, was still in effect, and that this amendment and the one providing for the recall of elective officials, being the last two filed, had been improperly submitted.[2] One initiated measure—that limiting the sessions of the legislature to sixty days and fixing the pay at six dollars a day plus ten cents mileage, with three dollars a day for fifteen days of an extra session—was saved by getting a majority of the total vote.

Within a little more than two years after the adoption of the I. and R., seven cases growing out of it were decided in the supreme court. Indeed, the amendment and its successor, soon to be mentioned, have been in the courts most of the time since, the average number of cases being about three a year.

The amendment allowing cities to issue bonds was re-submitted by petition in 1914, and the legislature submitted one providing for a lieutenant governor. Both received a majority of the vote cast on them, but not a majority of the total vote. The speaker, however, declared the first adopted, the latter not adopted—apparently on the theory that amendments submitted by petition required only a majority of the votes cast on them, those by the legislature a majority of the total vote. Amend-

[1] Hodges v. Dawdy, 104 Ark. 583 (1912).

[2] State *ex. rel.* City of Little Rock v. Donaghey, 106 Ark. 56 (1912).

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ment No. 10 did say that "any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon;" but a majority of the supreme court held that "any measure" referred only to legislation, and that the provision requiring a majority of the total vote on amendments had not been repealed.[3]

The emasculation of the I. and R. by the supreme court (the complete elimination of the part relating to counties and municipalities and the restriction to three amendments to be submitted at one time) and the abuse of the emergency clause by the legislature, thereby practically destroying the referendum, led to the submission of an entirely new I. and R. by petition in 1916. This was much more carefully drawn than the first, and was considered about the last word on the subject. It allowed eight per cent of the voters, based on the vote cast for governor at the previous election, to propose any law, ten per cent to propose any amendment, and six per cent to refer any act of the legislature. The same machinery was restored to the counties and municipalities, where fifteen per cent of the voters could either refer an ordinance or initiate one. To guard against abuse of the emergency clause, it provided that the fact of the emergency must be stated in a separate section and, for adoption, required a two-thirds majority of all members on a separate roll call. Franchises were declared not subject to the clause. It was made clear that "any measure," including an amendment, originated by petition, must be declared adopted when approved by a majority of those voting on it. Also the number of amendments that could be submitted by petition was unlimited. But nothing was said about removing the restriction on the number that could be submitted by the legislature, or the majority necessary to adopt such proposals. No measure approved by the people can be amended or repealed by the legislature, or city council, except by a two-thirds majority of all members.

This proposal was championed and promoted by labor leaders and other liberals, and some conservatives sought to arouse the voters against it as another step in radicalism. They laid great stress on the danger of encumbering the ballot, because there was no limit on the number of proposals. They succeeded; for the vote stood 69,817 to 73,782.[4]

The new proposition, somewhat modified, including the restoration of the limitation to three amendments, was incorporated in a new constitution submitted by a convention in 1918. Many of the friends of the new I. and R. fought the new constitution, and it was defeated. The original new I. and R. was re-submitted by petition in 1920, and received 86,360 votes to 48,662. This was not a majority of the total vote, and

[3] Hildreth v. Taylor, 117 Ark. 465 (1915).

[4] *Report of the Secretary of State, 1925–6*, p. 230. This report gives the votes on all proposals down to 1926; also the amendments adopted.

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the friends of the measure made haste to submit it again in 1922. This time they were doomed to keen disappointment, for the vote stood 38,690 to 61,118.

The proposal for municipal improvement bonds had been re-submitted in 1918, and again defeated through failure to receive a majority of the total vote. By this time the financial condition of the cities was growing desperate. They were forbidden by the constitution of 1874 to issue bonds, and taxation was limited to five mills. For their relief, the legislature of 1923 submitted an amendment allowing them to issue bonds to take up the floating debt and forbidding them to "make any allowance for any purpose whatsoever in excess of the revenue from all sources for the fiscal year." Counties also were included in this "pay as you go" plan.

This carried by a majority of the votes cast on it, but not a majority of the total votes cast. The mayor of Little Rock at once took steps to get it before the courts. A legislative proposal affecting the supreme court was in the same condition, and the judges declared themselves disqualified. Governor Terral at once appointed a special supreme court, and a majority of this body reversed the decision in Hildreth v. Taylor and declared the bond amendment adopted.[5] The effect of this was to revive amendments properly submitted which had received a majority of the votes cast on them. Chief of these was the new I. and R. submitted in 1920, although the same measure (whether exactly identical or not, the writer cannot say) had been defeated by a clear majority in 1922. The elimination through court decisions of amendments once declared adopted led to changes in numbering. The secretary of state called the new I. and R. No. 7, but H. W. Applegate, attorney-general, declared that two others had been eliminated and called it No. 5. The supreme court adopted the latter numbering in January, 1931, when it declared that the "pay as you go" amendment was No. 8 instead of No. 11[6]. But in May, 1932, it adopted the numbering of E. F. McDonald, secretary of state, who made "pay as you go" No. 10.[7]

The Brickhouse decision had the effect of reviving the legislative proposal for a lieutenant-governor,[8] which had been declared defeated in 1914; but an amendment submitted by petition in 1918 was ruled out, although it had received a majority, on the ground that it had been repealed "by implication" by the "pay as you go" amendment submitted by the legislature (No. 10/8).[9] Counties and cities found themselves relieved somewhat by the "pay as you go" amendment, but still very much

[5] Brickhouse v. Hill, 167 Ark. 513 (1925).
[6] Luter v. Pulaski County Hospital Association, 182 Ark., 1099 (1931).
[7] Stanfield v. Friddle, 185 Ark. 873; 50 Southwestern (2nd) 237 (1932).
[8] Combs v. Gray, 170 Ark. 956 (1926).
[9] Babb v. El Dorado, 170 Ark. 10 (1926).

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hampered in the matter of public buildings and permanent improvements. For the relief of cities, an amendment was submitted by petition (1926), allowing cities of the first and the second class to issue bonds for a list of specified improvements, after approval had been secured at the polls in a special election; and the same was secured (1925) for counties through a legislative proposal.[10] One county judge was disposed not to take advantage of the privilege of issuing bonds to take up the floating debt, but the supreme court ordered him to do so.[11]

The elections held in 1930 and 1932 came nearest to fulfillment of the prophecy that the ballot would be cluttered up under the I. and R., to the confusion of the voter; for nine amendments and two laws were submitted to the electorate in 1930 and five amendments and three laws in 1932. One of the proposed amendments in 1930 was submitted by the legislature and eight by petition. Of the eight, seven were prepared and supported by the Arkansas Taxpayers' Association, which had used every effort to defeat an income tax. Five of the seven were concerned directly with taxation and finance. The Association also secured a referendum on the income tax which the legislature of 1929 had passed, and which had stirred up most of the trouble. The opponents of the Association raised the cry, "Vote for the income tax and against all others." The income tax carried by a majority of 80,003, and all others were defeated. Yet the voting showed some discrimination, for the majorities against ranged from 44,778 to 5,384. Strenuous efforts were made to carry the proposal limiting the inheritance tax to that imposed by the United States and that forbidding suits for back taxes, but both went down in defeat.[12] The substance of the latter was, however, enacted by the next legislature.

The year 1932 was not far behind in the number of measures submitted and somewhat ahead in public interest, judging by the amount of writing and speaking pro and con. Five amendments and three acts were submitted, all by petition. The amendments were: (1) reducing the state property tax to one-half a mill and substituting a sales tax of one per cent; (2) forbidding the issuance of any more highway or bridge bonds, with a few exceptions, until ratified by a two-thirds majority of the votes cast on the proposal; (3) requiring the legislature to appropriate six dollars per capita of the school population for the public schools and an additional sum to be arrived at by arithmetical calculation; (4) exemption of homesteads (forty acres in the country, a lot fifty by one hundred and fifty in cities) from all taxes, regardless of value, except improvement taxes already levied; (5) a "split" session of the legislature and a four-year term for elective state officials, who were to be subject to recall.[13] All

[10] *Acts of 1927*, p. 1208; *Acts of 1929*, II, p. 1522.
[11] Jackson v. Madison County, 175 Ark. 826 (1927).
[12] Sen. Jour., 1931, pp. 30–32.

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were defeated by large majorities, although the third received a respectable affirmative vote, 61,852 for to 114,520 against. Everybody would have been glad to see larger funds supplied to the public schools, but most people felt that they could not stand an increase of taxes. The first proposal, substituting a sales tax for the property tax, did not receive ten per cent of the vote cast for governor.[14]

One of the severest criticisms leveled at the legislature arose out of the time frittered away in passing local and special acts. The legislature of 1923 responded by submitting an amendment depriving itself of the right to pass local, but not special, acts. This was approved at the polls, but the supreme court held that the amendment ought not to have been put on the ballot, because the vote in the legislature had not been properly entered on the journals.[15] The people, however, were determined to stop the evil, and they initiated a simple amendment to the effect that "The General Assembly shall not pass any local or special act," though it was allowed to repeal such acts; and this was adopted.[16] Before this, the supreme court had ruled that a law ostensibly general in character, but so worded as to apply to only one county, was local legislation.[17] Cities have their councils, but the only legislative body for counties is the quorum court. Its powers are limited to levying taxes and making appropriations; hence the other legislative powers for counties can be exercised only through the initiative.

The referendum has been used only twice, both times on tax bills. A well-known tax bill designed to enable the state to make up a growing deficit by a gradual increase of the property tax was defeated in 1912. In 1930, an income tax was sustained. An effort was made to invoke the referendum on a bill relating to prohibition to which the emergency clause was attached, although the bill itself was not to go into effect for nearly a year. The supreme court held that this was allowable,[18] and the referendum was denied. The court also held that the ratification of an amendment to the Constitution of the United States was not a law, and was not subject to the referendum.[19]

Thirteen acts have been initiated by petition. In 1912, state-wide prohibition, bi-partisan election boards, and free textbooks were all defeated. Two years later, a child-labor law, which the legislature had refused to pass, was adopted; but the next legislature weakened it by amendment. This was before the adoption of the new I. and R. A "pub-

[13] *Fayetteville Daily Democrat*, July 14, 1932.
[14] *Arkansas Gazette*, November 30, 1932, 1: 6.
[15] McAdams v. Henley, 169 Ark. 97 (1925).
[16] *Acts of 1927*, p. 1215.
[17] Ark-Ash Lumber Co. v. Pride and Fairley, 162 Ark. 235 (1924).
[18] Hanson v. Hodges, 109 Ark. 479 (1913).
[19] Whittmore v. Terral, 140 Ark. 493 (1919).

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licity act" providing for the publication in newspapers of proposed amendments and acts, and a number of other things, was adopted under the misleading caption "For reducing expenses." A new primary election law drafted by a defeated candidate was adopted in 1916. To save expenses, the legislature consolidated state and national elections in 1915, but opposition was so great in some counties that the act was repealed in 1921. In 1926, a measure for consolidation, initiated by petition, carried by 101,867 to 24,837.[20] After having made repeated efforts to get the legislature to repeal the "full crew" law, the railroad operators attempted it through the initiative, but were defeated. The anti-evolution law was ratified in 1928, and a law requiring the reading of the Bible in public schools in 1930. In 1932, three acts were submitted. The first was supplementary to the proposed amendment for a sales tax, and was inseparably bound up with that proposal. The second proposed to give the organization of the minority party (Republican) the power to name its representatives on the election boards and commissions. It was prepared and financed by the Republicans. The third proposed to set up a crude and ineffective budget system.[21] It was prepared and financed by the same group which proposed the "split" session of the legislature, and was supposed to supplement that proposal. All were defeated by large majorities, although the second received a considerable affirmative vote.

Comparatively little use has been made of the provision for local legislation in the new initiative and referendum, and that little has been involved in court proceedings. An illustration is afforded by the case of the light and power company of Texarkana, which asked for an increase of rates and secured the approval of the city council. A referendum was resisted by the council and by the company—by the latter on the ground that such matters were not subject to the referendum and that granting the referendum would impair its contract rights. The court held, however, that rate-making is a legislative act and subject to the referendum, and that granting the referendum was not making a law impairing the obligations of a contract.[22] In a previous decision affecting another public utility, the supreme court had held that the legislature did not intend to include matters relating to franchises when it excluded the police power from the referendum.[23] In 1932, an almost universal cry was going up for a reduction in the cost of government. A citizens' committee of Union county prepared a referendum proposing to meet this demand by cutting county salaries nearly fifty per cent, whether wisely or not the writer does not undertake to say, and invited other counties to follow suit. Four others did

[20] *Acts of 1915*, p. 402; *Acts of 1921*, p. 7; *Acts of 1927*, p. 487.
[21] *Fayetteville Daily Democrat*, July 14, 1932.
[22] Southwestern Cities Distributing Co. v. Carter, 184 Ark. 1-13 (1931).
[23] Terral v. Arkansas Light and Power Company, 137 Ark. 523 (1919).

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so. An effort to block the move succeeded in one county because of defects in the petition, but failed elsewhere. Two of the counties, Union and Phillips, ratified the proposal, but Miller and Saline rejected it.[24] The attempt in Union county continued after the election, the act being attacked on the ground that the amendment was not self-executing and that the act itself violated a general law; but the supreme court ruled out all objections.[25] Fort Smith voted not to abandon the commission form of government and return to the aldermanic form.[26]

What use is being made of the I. and R. in Arkansas? Who are using it, and why?

From 1912, the year the I. and R. became operative, to 1932, twenty-six proposed amendments were submitted by petition and nineteen by the legislature, counting duplications in both instances. The new I. and R. and the bond amendment for cities were submitted three times, each by petition, the latter once by the legislature. Out of twenty-six proposals made by petition, eight were ratified by a majority vote, but two were ruled out by the supreme court because in excess of the number allowed for submission, which was three at that time. Another has been superseded by a legislative proposal for a still higher local tax for schools. Still another was declared by the supreme court to have been repealed by implication by a later amendment. Four are still in effect. A part of another, limiting the sessions of the legislature to sixty days, is still in effect, but the limitation of pay to six dollars a day (this was in 1912) has been superseded by a legislative proposal raising the pay to one thousand dollars. A similar proposal for six hundred dollars had been turned down; probably this would not have succeeded had it not been tied up with an increase for the governor and supreme court judges. Four amendments and part of another may not appear to be a very good record for twenty years, but the eight submitted in 1930 can hardly be said to have been submitted by the people who fought for the I. and R. More particularly is this true of at least three of the five submitted in 1932.

We have seen that the adoption of the I. and R. was opposed on the ground that it would promote radicalism, perplex the voter, and lead to confusion in legislation. The first amendment offered and secured through the initiative limited the sessions of the legislature to sixty days and provided moderate pay. The last legislative session before its adoption, that of 1911, had lasted 140 days and had cost about $200,000. The first after adoption lasted only sixty days and cost about $76,000. In the quantity of its output, the shortened session fell only slightly behind it predecessor—1,560 pages of acts compared to 1,980 pages in 1911. In

[24] *Arkansas Gazette*, November 13, 1932.
[25] *Ibid.*, December 6, 1932.
[26] *Southwest American*, December 6, 1932.

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quality, it is doubtful if the product was much, if any, inferior to that of the previous session, although it was by no means perfect.

Of the twenty-six amendments submitted by petition in the period from 1912 to 1932, only two—the recall and the one removing all limitations as to the amount that could be voted in the school districts for education—could very well be called radical from the point of view of departure from tradition or attacks upon private property. At the same time that the recall was submitted, the conservatives—and "radicals"—sought to curb reckless legislation and extravagant expenditures by limiting the sessions of the legislature to sixty days. Driven to desperation by the taxing policy of the legislature (mainly the income tax), the conservatives hatched out a brood of seven amendments in 1930, five of which were designed to curb that body. But of all the radical amendments proposed by petition, not one came anywhere near two proposed by the legislature. In 1918, this body submitted to the electorate a proposition to allow the state to go into the banking business, restricted to loans to farmers. Evidently the solons had forgotten the sad experience of the state in the banking business in 1836. The second proposal coupled together a graduated income tax and a progressive land tax on unimproved lands in excess of 320 acres. Most people do not consider a graduated income tax radical; some may consider a progressive tax on unimproved lands sensible, but few will deny that it is radical.

Of the five amendments proposed in 1932, one providing for the "split" session and the act for a budget accompanying it simply represented the immature judgment of good citizens who had not sufficiently studied the problem of reorganization of the state government. The proposed school amendment was simply unwise for a period of depression. A great mystery surrounded the origin and the source of the financial support of the other three. They seemed to mark the definite entrance of "special interests" into the field of popular government. The proposal to prohibit the issuance of any more road bonds until ratified by two-thirds of the electorate was decidedly conservative; also the holders of bonds already issued may have hoped to profit by it. It was currently reported that the railroads were back of the proposal to reduce the property tax and substitute a sales tax. Certainly the railroads and other utilities and absentee owners would have reaped a harvest by its ratification. Another "special interest" was strongly suspected of being back of the insidious proposition to exempt homesteads, but nothing has been proved. The last two exhibited a bold attempt on the part of "special interests" to profit at the expense of the people under the specious pretext of reducing taxes.

The campaign against the measures was one of the most spirited the state has ever experienced. Conservatives and liberals (radicals?) made common cause against the measures, for they felt that if three of them

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were adopted, the state government would be wrecked and the schools closed. In 1930, the cry had been "Vote for the income tax and against all others." This time it was "Vote against all." It is unfortunate that such tactics should be adopted, yet the voting was not all blind. Groups were formed to study the measures. Many articles in the newspapers and numerous speakers explained the proposed amendments and told what their adoption would mean. The fact that the people saw through the schemes, especially the proposal to exempt homesteads, and turned them down by overwhelming majorities tends to renew one's confidence in democracy.

In the field of legislation, perhaps prohibition (defeated in 1912), free textbooks (defeated in 1912), and the child-labor law (adopted in 1914) should be put in the so-called radical class; but anyone acquainted with the subject would say that the last measure was very mild. Over against this, the conservatives, by means of the referendum, defeated a new tax bill (1912) designed to wipe out the deficit and sought to defeat the income tax (1930), but failed. The attempt to repeal the "full crew" law also failed (1930), although some who supported so-called "radical" measures supported repeal. In no case can it be charged that the radicals went as far in their radicalism as the conservatives did in their conservatism when they put through the anti-evolution law (1928) and the measure requiring the reading of the Bible in the public schools (1930). Two of the acts submitted in 1932 partook of the nature of the amendments with which they were bound up. The other was neither conservative nor radical, but possibly unwise because it proposed to allow a party organization to appoint public officials.

The fear that the ballot would be cluttered up and the voter confused by the multiplicity of proposals can hardly be said to have been realized, at least not more than twice. In 1912, five amendments and four acts were submitted, yet there was nothing particularly confusing about them. Then the supreme court cut the number to be submitted at one time to three. In 1926, the first year after this restriction was removed, four were submitted, two of these coming by the initiative. The greatest number ever submitted, i.e., nine, came in 1930, when at least seven could be ascribed to the conservatives. In the same year, two acts were submitted, both by the conservatives. Several of the measures submitted in 1932 were so pregnant with ruin that they were more exasperating than confusing.

The right to vote on measures is exercised very freely, although the vote never is as large as on the selection of officials. The range has been from 91 per cent (on prohibition) to 60 per cent of the total, the average being around 75 per cent. The voting also shows discrimination. For example, the Turner-Jacobson bill was voted down (1912) because it would

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have increased the general property tax, but the income tax carried (1930) by an overwhelming majority. The proposition to allow an increase of district school taxes to twelve mills (1916) carried, 108,173 to 52,175, but four years later the proposition to remove all limitations was snowed under, 14,384 to 88,713. Schools, however, are easily understood and are of interest to most people, and in 1926 the limit was raised to eighteen mills with fewer negative votes than were cast against twelve mills in 1916.

Some absurd distinctions remain. The constitution of 1874 directed that all amendments proposed by the legislature—the only method then provided—should be advertised for six months immediately preceding the elections. The I. and R. allows petitions to be filed up to four months before the election. The secretary of state now advertises legislative proposals six months and initiative measures four months to six weeks before the voters pass judgment. He does not seem to preserve copies of initiated measures which are defeated.

One thing emphasized by the history of the I. and R. in Arkansas (though not newly revealed, for a study of legislative acts had made it known) is the need of a bill-drafting bureau. If one were in existence, the work of the courts would possibly be lessened. The recent election emphasized the need of regulations analogous to those of corrupt practices acts. This should require the publication of the names of those who drafted the proposal and of those who paid for the expense of its publication and of securing signatures. Also it should require publication, a few days before the election, of campaign contributions and expenses.

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The Referendum in Maryland. The constitution of Maryland was amended in 1915[1] so as to reserve to the people the power known as the referendum. As is also true in New Mexico, no provision is made for any use of the initiative. Certain rather unusual provisions, interpretations, and applications of the referendum seem, however, to justify comment.

In addition to the rather customary procedural and emergency provisions, the amendment places certain limitations upon the use of the referendum. One is that "no law making any appropriation for maintaining the state government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase, or any part thereof specified in the petition, may be referred to a vote of the

[1] Article XVI.

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people upon petition." The passage of an act in 1927 taxing retail sales of gasoline in order to provide funds for constructing public roads gave a chance for judicial interpretation. A referendum petition was filed against the law, and the court of appeals held[2] that the measure was so closely connected with the budget as to make it, in effect, an appropriation measure for "maintaining the state government," and hence not referable. In view of this decision and the budget provisions of the constitution, it seems doubtful whether state-wide revenue measures will ever be subjected to a popular vote. Conceivably, a revenue act to provide a fund for "maintaining or aiding any public institution" in excess of the next previous appropriation therefor might be referred. Or a law not sponsored by the administration might be enacted, and, having no immediate connection with the budget, might be referred. But passage of such a law is highly improbable.

Liquor laws are likewise not subject to the referendum. The enactment of a law of this nature in the special session of 1917 without conforming to the "emergency" provisions of the referendum article brought about another interesting decision. It is provided that no law shall take effect until the first day of June next after the session unless it is declared emergency legislation and passed by three-fifths of all the members elected to each house of the general assembly. The 1917 law was not so passed. It was held,[3] however, that, since liquor laws are not referable, none of the provisions of Article XVI apply to such legislation. In other words, the exclusion of liquor laws from the application of the referendum free them also from the more stringent time and emergency provisions set up by the article. Such legislation is to be subject only to the more lenient provisions of the original constitution.

The remaining type of limitation put upon the referendum is the territorial one. Although "any act" is referable, according to section 1 of the article, the provisions for petitions refer only to general measures and "public local laws for any one county or the city of Baltimore." It has accordingly been held that laws affecting territorial areas other than the entire state or any county or Baltimore City are not referable.[4] Furthermore, since such laws are not subject to a popular vote upon petition, they do not come under any of the provisions of the referendum article. Such acts, says the court, "although not emergency acts, can be made to take effect as of the date of their passage."[5] In other words, the early provisions of the amendment with respect to when laws are to go into

[2] Winebrenner v. Salmon, 155 Md. 565 (1928).

[3] Beale v. State, 131 Md. 669 (1917).

[4] Almost one-fourth of all the laws passed in the 1931 session are thus non-referable. On one such local measure, a county-wide petition was filed; but the attorney-general has held it not subject to the referendum.

[5] Richardson v. Blackstone, 135 Md. 530.

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effect, and as to what is to be the procedure as well as the content of emergency measures, are applicable only to referable laws. All others—liquor laws, appropriation acts with whatever revenue measures are thereby affected generally, and laws applicable to territorial areas other than the state, a county, or Baltimore City—are governed by the original provisions of the constitution.

VOTES ON REFERRED MEASURES IN MARYLAND, 1920–1930

Year	County	Vote on Leading Office	Referendum Vote				Av. Vote on Const. Am.	
			For	Against	Total	Per cent.	Per cent.	Total
1920	Anne Arundel	11415	2782	2606	5388	47.2	29.3	3338
	Caroline	5994	806	2374	3180	53.0	33.7	2012
	Dorchester	8214	1122	2425	3547	43.1	29.8	2455
1922	Anne Arundel	8560	1657	2633	4290			
			2348	2313	4661	53.9	45.4	3888
			1937	2967	4904			
	Dorchester	6182	1729	3278	5007	80.9	51.0	3154
1924	Washington	15106	5041	7275	12316	80.5	37.3	5644
			4199	7816	12015			
1928	Anne Arundel	16495	1287	7509	8796			
			1183	7426	8609			
			1266	7419	8687			
			1229	7530	8759			
			1260	7526	8786	52.7	49.0	8080
			1253	7821	9074			
			1189	7386	8575			
			1214	7401	8615			
			1167	7245	8412			
	Howard	6417	1500	3020	4520	70.4	60.0	3853
	Somerset	7399	292	2084	2376	32.1	30.7	2276
1930	Anne Arundel	15889	7328	2717	10045	63.2	37.2	6026
	Howard	6329	931	2912	3843	60.7	48.2	3055

Notwithstanding that the referendum has never as yet been called into play on state-wide legislation,[6] it has been used frequently by the counties. The accompanying table shows its use in five elections, no record

[6] Three petitions have been filed. That on the gasoline-tax law of 1927 was mentioned above. Two others have been filed on acts of the 1931 session. One of these has been declared invalid by the court of appeals; the other has been ruled against by the attorney-general.

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appearing of any earlier referenda under the petition method.[7] An understanding of the votes shown in the table depends in part upon a knowledge of the process by which local legislation is enacted.

When a bill applicable to a local area is introduced in the house of delegates, it is assigned to what is termed a select committee. If the local area is Baltimore City, the committee consists of the thirty-six delegates from Baltimore City. If it is a county or a city or other area within a county, the committee consists of the county delegation, unless it has less than three members. In the latter case, some other delegate is named to sit with the delegation. In the senate, Baltimore City bills are sent to the six Baltimore senators acting as a select committee. County bills, or those affecting an area within a county, go to the senator from that county, with whom, theoretically, sit two other senators, usually from nearby counties. In nearly all cases, the committee is therefore unipartisan, since the county serves as the representative unit. The house and senate accept almost invariably the recommendation of the select committees. What we have here, then, is a species of home rule. The people of any county or of Baltimore City, through their representatives in the general assembly, legislate for their own area. Cities and other local areas exclusive of counties must, of course, depend upon the county representatives to represent their interests.[8] With such a method of legislating for local communities, the referendum may serve as a popular check upon the local delegations.

The results seen in the table indicate first of all a prevalent protest against the action taken by the select committees. It is to be noted that, of twenty-two measures referred, only three have been accepted by popular vote, two by rather narrow margins. Generally, the vote has been overwhelmingly unfavorable, more than seventy-two per cent of all votes cast on the twenty-two measures being in the negative. Such results would seem to encourage wider use of the referendum. The fact remains that only six counties out of twenty-three (Baltimore City has limited home rule) have as yet made use of this protest power, two of these using it only once each. Anne Arundel county, on the other hand, accounts for fourteen of the twenty-two.

Another item of importance is revealed in the size of the vote cast. The table indicates the total vote on referred measures as well as that on

[7] The general assembly does, however, occasionally pass local legislation subject to popular ratification. Curiously, the court of appeals permits such a reference of local measures while denying the constitutionality of a popular vote on state-wide legislation except by the petition method. Cf. Brawner v. Supervisors, 141 Md. 586 (1922), and Levering v. Supervisors, 137 Md. 281 (1920).

[8] In 1929, 392 out of 972 house commitments and 364 out of 858 in the senate, were to "select" committees. For a more extensive study of this kind of local legislation, see the author's recent *State Legislative Committees* (Baltimore, 1931).

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the chief office in the same election. It is seen that the vote on measures is far below that on officials, the percentages in the fifth column indicating the relation of the referendum vote to that for the leading office. These percentages vary from 32.1 to 80.9, with a rough average of 58. Considering the fact that the total number of actual voters is usually far below the registration number, this figure seems to indicate no very marked interest in voting on referred measures. Does this condemn the referendum? For a century and more we have accepted the idea that constitutional amendments should be ratified by a popular vote. In every election where the referendum has been used in Maryland, constitutional amendments have been submitted. The table indicates that, without exception, the vote on amendments was smaller than on referred measures, with an average of approximately 41 per cent of the total, contrasted with the 58 per cent suggested above. So far, therefore, as participation serves as a test of worth, the advantage lies with the newer kind of popular referendum. It would be interesting to see whether similar results would appear in referenda of a state-wide character.

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RURAL LOCAL GOVERNMENT

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Investigating County and Township Government in Michigan. In response to public criticism of the operation of local government in Michigan, particularly in units other than cities and villages, the legislature, by Act 156 of the Public Acts of 1931, authorized the governor to appoint a commission of inquiry into county, township, and school district government. The commission was instructed to give special attention to changes that would reduce the cost of maintenance of such governmental units and increase their efficiency; and authority was given to examine the files and records of any county, township, or school district in the state. The commission's membership consisted of Clarence L. Ayres of Detroit (chairman), C. E. Bement of Lansing, Judge P. C. Gilbert of Traverse City, M. B. McPherson of Lowell, and A. E. Petermann of Calumet. A legislative appropriation of $5,000 was supplemented by financial assistance from the University of Michigan, Michigan State College, the Detroit Bureau of Governmental Research, and the Spelman Fund of New York; and Dr. Lent D. Upson was chosen director of the survey. Committees utilized in the inquiry included those on (1) social and economic trends, (2) organization and cost of county and township government, (3) rural school government, (4) local government in the metropolitan area, (5) school government in the metropolitan area, (6) debt and taxation in local government, and (7) organization and administration of the following services: public welfare, public health, public works, and justice. The report of the commission went to Governor Wilber M. Brucker late in December, 1932, and the expert studies have been transmitted to the legislature during the current session. All will be available in a series to be known as *Local Government in Michigan*, and will be published as separate documents.

The study of the organization and cost of county and township government was under the direction of Thomas H. Reed and Arthur W. Bromage, of the University of Michigan, and the present note deals solely with their report. The principal objective was to determine the cost of county and township government in certain typical counties of the state and to recommend changes that would reduce such cost. The counties selected for study in the Upper Peninsula were Luce, a sparsely settled and cut-over county, and Iron, a mixed farming and mining county. In the Lower Peninsula, Antrim was selected as an example of combined resort and farming interests; Roscommon, as a typical sparsely populated and cut-over county; Cass, as representative of the rural and agricultural counties of the southern section of the state; and Kent, as an example of a

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combined agricultural and urban county. There were in these six counties 75 township governments. Field work to determine the cost of county and township government was carried on by graduates of the Curriculum in Municipal Administration at the University of Michigan. In the case of township costs, in which an attempt was made to break down the existing township funds into functional costs, interviews were secured with present and past township officials to obtain an itemization of lump-sum bills which they had presented.

As to the cost of county government, the findings show the extreme need for county consolidation in the northern part of the Lower Peninsula. It was demonstrated that the cost of general administration in counties is not reduced proportionately as population decreases. For example, Antrim county, with approximately 10,000 people, spent $14,849 in 1931 for general administration. This included the cost of the board of supervisors, court-house and grounds, elections, and the offices of treasurer, clerk, and register of deeds. In the same fiscal year, Luce county, with 6,528 inhabitants, spent $12,456, and Roscommon, with only 2,055 inhabitants, spent $12,268. This would indicate that the cost of general administration is relatively constant regardless of the number of inhabitants when county population falls below 10,000 people. The savings in other governmental activities that would result from consolidation were not so easily determined.

In general, the costs of judicial administration in the counties bear out the same conclusion reached in the case of these general administrative offices, namely, the advantages to be derived from consolidating smaller counties. While it was impossible to prove that such consolidations would necessarily result in material savings in such activities as welfare, health, and roads, the opportunity for reduction in the administrative overhead of these activities was apparent. Sufficient funds were not available for comprehensive studies of specific county consolidations taking into account geographical features, road facilities, trade areas, and many other factors. Therefore it was recommended that the legislature create a separate commission to study possible consolidations, and that pursuant to its findings the legislature, by a general, mandatory act or by special acts subject to local referenda, attempt to reconstitute county areas.

As to the organization of county government, the study showed that in no county surveyed was there complete coöperation between the unwieldy boards of supervisors and the principal officers of the county—clerk, treasurer, register of deeds, prosecuting attorney. The plain facts of the case are that county government as it operates in Michigan is not a single or unified government with a responsible head, but a miscellaneous collection of officials, boards, and commissions, with activities coextensive with the county limits. As one county official said, in comment-

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ing on the organization of his county: "When something goes askew and an attempt is made to discover where the fault lies, you run into the most refined and elaborate system of passing the buck that exists anywhere, the result being that the blame cannot be pinned on anyone."

The direct election of administrative officers is not alone responsible for this situation. The unwieldy boards of supervisors composed of representatives from townships and cities meeting at rare intervals are not appropriate agencies to control even the few administrative officers subject to appointment. Any comprehensive reorganization of county government must wait upon constitutional amendments, since both the type of county board and the elective administrative officers are imbedded in the state constitution.

As to township government, the survey showed clearly that the major township activity is the construction and maintenance of highways. By action of the legislature in 1931,[1] township highways are now being transferred to the county at the rate of twenty per cent a year. It was recommended that this process be accelerated—indeed, that all township highways be so transferred within a year. In addition, it was found that the townships are performing at considerable expense and in an inefficient manner the following activities: assessing, levying, and collecting taxes; conducting elections; enforcing health laws; caring for cemeteries; registering vital statistics and chattel mortgages; administering the dog tax; and in two of the six counties studied, administering outdoor poor relief. Of the 75 townships studied, a number were exercising their option to provide additional services: 15 supplied street light service, 18 fire protection, 11 library facilities, 4 parks, and 3 public water supply. The report indicates that the township has become an unnecessary, and therefore a wasteful, unit of government, that its major functions—assessing, levying, and collecting taxes, conducting elections, caring for highways—could be as well, and in all probability better, performed by the county, and that its optional functions—water supply, street lighting, and fire protection—could readily be managed through assessment districts under county authority. Even in the elementary fiscal functions, i.e., assessing property for taxation, collecting taxes, and expending township funds, the rapid turnover of township officials dispelled any hope for improved technical procedure through uniform accounting and reporting except at great expense, and only after extensive supervision by the state. For these reasons, it seemed wise to propose the abolition of the township.

To effect the reorganization of county government and to provide for the transfer of township activities to the county, the following constitutional amendment was proposed:

"Article VIII of the constitution of the state of Michigan is hereby

[1] Act 130, *Public Acts of 1931.*

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amended by adding thereto a new section to be known as Section 1a, providing for alternative forms of county government and for county home rule, to read as follows:

Section 1a. The legislature shall provide by general law for the organization of counties, and such general law shall provide for the submission to counties of alternative forms of organization which may be adopted by an affirmative vote of a majority of the electors of any county voting thereon at any general or special election. Under such general law the electors of each county shall also have power and authority to frame, adopt, and amend a charter for its government. Such general law or charter may provide for: (1) the continuance or discontinuance of the organized townships within the county, and the transfer of any or all of the powers now exercised by townships or township officers to officers of the county or state; (2) the number of supervisors and the method of their election; (3) the election or appointment of all constitutional county officers for the said county, anything else in this constitution to the contrary notwithstanding, and the election or appointment of all other officers and employees of the county; (4) the election or appointment of a general county executive, his powers, and his relation to the other officers of the county; (5) the exercise by said county of powers of a local legislative and administrative character relating to the affairs of the county and not inconsistent with the provisions of this constitution and the general laws of the state; (6) the organization of a court or courts for said county which shall exercise the jurisdiction which now is or hereafter may be conferred by law upon justices of the peace in townships. *Provided*, that any charter adopted under the foregoing provisions must provide for the execution, by appropriate officers of the county, of all duties and obligations relating to other than the local affairs of said county which now are or hereafter may be imposed by the constitution and laws of the state; and *provided further* that nothing in this section shall be taken to affect the manner of election or appointment or powers and duties of circuit judge, judge of probate, prosecuting attorney, or any clerk, deputy, or employee thereof."

This constitutional amendment recognizes the impracticability of imposing by mandatory action upon the people of all sections of a state so diversified as Michigan a new system of local government replacing the township-county organization as it has existed for over a hundred years. It admits further the obvious facts that conditions in the southern and industrial part of the Lower Peninsula are so different from those in the remainder of the state as to make feasible both the home rule plan and the optional law system. In the event that general optional acts passed by the legislature did not suit the needs of the industrial counties, the home rule principle would be of great value.

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Pursuant to such a constitutional amendment, it was recommended that the legislature make optional with the counties a county manager form of government and a county-mayor plan. It was further suggested that both of these plans permit a small board of supervisors, of five to nine members, elected (1) at large, or (2) by proportional representation, or (3) by supervisorial districts laid out by the county board; or the retention of the existing system of township and municipal representation upon the county board.

Three schemes of departmental organization were suggested. The first called for departments of public works, finance, records, welfare, and health. The second provided for a similar organization, with the departments of finance and records consolidated, and with the departments of health and welfare consolidated. For small counties, a non-departmentalized administrative organization was recommended as at present, but all officers to be selected by the chief executive and the offices of clerk and register of deeds to be combined. Under all of these administrative schemes it was urged that the sheriff be left merely as an officer of the court to be appointed by the judge or judges of the circuit court, his police duties to be transferred to the state police. Finally, it was urged that all alternative acts as to county organization permit the abolition of townships, with provision for the exercise of the functions of township officers by appropriate officers of the county.

Recommendations were made for specific statutory changes pending constitutional modification. Among these suggestions were the collection of all taxes by the county treasurer, the abolition of the police functions of the sheriff, the establishment of regional jails, the transfer of the functions of the drain commissioner to the county road commission, the elimination of the office of coroner and the performance of his duties by medical examiners, and the abolition of the fee system.

ARTHUR W. BROMAGE.

University of Michigan.

The Principle of Local Self-Government in Virginia. In his famous letter to Samuel Kercheval, Jefferson wrote concerning the principle of local self-government as follows: "The organization of our county administrations may be thought more difficult. But follow principle, and the knot unties itself. Divide the counties into wards of such size as that every citizen can attend, when called on, and act in person. Ascribe to them the government of their wards in all things relating to themselves exclusively. A justice, chosen by themselves, in each, a constable, a military company, a patrol, a school, the care of their own poor, their own portion of the public roads, . . ." "We should, therefore," Jefferson summarizes, "marshall our government into (1) the general federal republic for all con-

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cerns foreign and federal; (2) that of the state for what relates to our own citizens, exclusively; (3) the county republics for the duties and concerns of the county; and (4) the ward republics for the small and yet numerous and interesting concerns of the neighborhood. In government as well as in every other business of life, it is by division and subdivision of duties alone that all matters great and small can be managed to perfection. And the whole is cemented by giving to every citizen, personally, a part in the administration of public affairs."[1]

The Jeffersonian principle of local self-government was often used to support arguments in the controversies which marked the recent session of the general assembly. A proposal, strongly supported by educators, to increase the state's appropriation for public schools by two million dollars was opposed by the governor, first, because the state was not financially able to increase its appropriation for this purpose, and second, because any substantial increase in state aid would impair the idea of local self-government by weakening the people's sense of responsibility for their local concerns. In regard to the latter aspect, Governor Pollard said: "When the counties get all of their money from Richmond, they will get all of their government from Richmond. There will be little left of that community spirit which furnishes such a fine school for citizenship. . . . Even the fact that some economies may be effected by the centralization of power is by no means conclusive, for I believe that if we weaken local self-government merely to save money we will be 'paying too dear for our whistle.' It will be a sad day for Virignia if the state should ever take over entirely the schools and the roads. When that day comes, local self-government in Virginia will be dead."

The governor was speaking in the vein of a statesman, but the wind was blowing strongly in another direction. Defeated in their attempt to get a two-million-dollar increase in the appropriation for education which would involve an increase in taxes, the educators, with the assistance of several able members of the general assembly from tidewater Virginia, proposed a diversion of five million dollars from the road fund to education. Although forty cents of the state's tax dollar goes to roads, while only twenty cents is spent for public free schools, strong opposition developed, and the road fund was successfully defended against the designs of the educators, largely because of former Governor Harry F. Byrd's opposition to its diversion.

Mr. Byrd was then requested by one of the leaders of the diversion group to propose some plan whereby local taxes could be reduced; for a reduction of taxes on real estate which, under the segregation principle, bears the brunt of local taxation is a strong motive in seeking greater state aid for local governmental functions. Mr. Byrd's reply was that the

[1] *Writings of Thomas Jefferson* (Ford's ed.), Vol. X, p. 37.

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state should take over all county roads as a means of local tax relief—a plan manifestly patterned on that of North Carolina, and coming quite unexpectedly, since there had been no discussion of the state's assuming the responsibility for county roads. In outlining his scheme, Mr. Byrd said: "It is not an invasion of local self-government, as roads do not begin and do not end in the counties, but are continuous highways connecting with other counties." The plan immediately won popular and legislative support, a compliment no doubt to the author's popularity, as well as an indication of the strong tendency toward state centralization.

As a concession to the principle of local self-government, Mr. Byrd agreed to an amendment providing that a county might, by vote of its electorate taken before July 1, 1932, exempt itself from state control. A county choosing to do this will continue to get its quarterly allocation of the gasoline tax, but it can expect nothing from any other source of state aid. State control of roads therefore automatically extends to all counties which acquiesce without an election and an adverse vote. Elections were recently held in fifteen counties on this question, but only four voted to stay out of the state system.

Under the Byrd road act, the state will construct and maintain through its department of highways approximately 50,000 miles of county roads, to be known as the secondary system of state highways. The county boards of supervisors lose one of their most important functions, retaining their power to establish new county roads only in case the state highway commissioner is a party to the proceeding.

One of the desirable features of the plan will be the elimination of approximately 500 separate road districts. Such extreme decentralization in the administration of a governmental function as has existed obviously results in lack of standardization in road machinery, and duplication of officers and road equipment. If Virginia's experience is similar to North Carolina's, these facts will be strikingly revealed when the state takes inventory of its new stock. As Governor Gardiner pointed out in his recent address before the general assembly, some North Carolina counties were found with five times as much road equipment as was needed, while in some of the poor counties the road equipment was negligible. According to the Virginia plan, a comprehensive road map will be made and an inventory will be taken of all local road equipment. The local road authorities will be paid for any machinery that the state takes over, according to an appraisal made by the state highway commissioner. Any money paid the counties for machinery must be used to retire outstanding indebtedness incurred for road purposes.

The forty or fifty thousand miles of roads added to the state highway system under this act will be financed by the state retaining and spending on the secondary roads the $3,255,000 which represents the counties'

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annual portion of the gasoline tax for 1931. In addition to this sum, the general assembly provided for $2,000,000 annual expenditure to be taken from the general highway fund. There is good reason to believe that the state, with its better equipment and highway personnel, can make this $5,255,000 go as far on the secondary road system as the $8,500,000 which represents the amount spent on the entire county road system in the fiscal year 1930.[2]

Those counties that come under state control are promised that there will be spent on their roads an amount equal to their former participation in the gas tax. In addition, they will share in the $2,000,000 appropriation. On the other hand, no county will be allowed to make any levy or contract any indebtedness for roads, except to continue the levy if necessary to pay off an existing indebtedness incurred for this purpose. In 1931, the county levies assessed for roads amounted to $3,250,000. Local taxes, therefore, will be reduced to this extent. This is equivalent, according to an analysis of the state department of taxation, to a reduction of twenty per cent of the total property tax levies now imposed in the counties.

Notwithstanding Mr. Byrd's assurance, and the provision which allows a county to vote to stay out, local self-government received a severe blow when the state took over all county roads. It received another set-back when the general assembly denied the biennial plea of the local governments for power to levy special assessments on abutting property for street improvements. The resolution which failed to pass provided that "assessments on abutting property could not be made until local governing boards had adopted an ordinance, until this ordinance had been accepted by the majority of voters of the localities, and until the majority of the property-owners directly affected by the assessment had in writing expressed their approval." These provisions were declared "extremely dangerous" by the opponents of the measure.

Localities may find their right to be disorderly restricted by the new law which enables the governor to send special police to counties and cities where lawlessness prevails either because of impotency or negligence of local officers. This act, as a Virginia newspaper declared, marks another long step toward centralization and deals another blow at local self-government.

"Home rule at last becomes a reality in the state where it was enunciated by Jefferson" is at least one editorial opinion of bills lately passed by the general assembly to modernize county government. Three acts which allow the counties by a vote of the people to consolidate, or to elect jointly certain county officers, or to choose between the county manager and county executive types of government seem to justify this opinion.

[2] *Comparative Cost of Local Government* (Richmond, 1930), p. 18.

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County consolidation, particularly in the smaller and poorer counties of the state, is a desirable feature. It should come before any new form of government. In the event that several counties want to consolidate, the boards of supervisors must first draw up a consolidation agreement providing the name under which it is proposed to consolidate, an appraisal of the property in the several counties, the indebtedness of each county, the proper name and location of the county seat, and the proposed form of government for the consolidated county. The people of the respective counties then vote on consolidation pursuant to this agreement. In the event of a favorable vote on the question, the new and greater county created by the consolidation comes into possession of all the privileges, property, and debts of each of the several counties.

In a popular vote on changing its form of government, a county decides two questions on the same ballot: first, whether it is the people's desire to change, and second, in the event of change, which form of government is wanted, the county manager or the county executive. In both types of government, the people will elect the county board of supervisors, the clerk, the attorney for the commonwealth, and the sheriff. In both types, the county board, designated the policy-determining body, will set up departments and employ a county manager or a county executive. The distinguishing difference between the two forms of government is that the county board will appoint, upon recommendation of the county executive, all officers and employees in the local administrative service, while the county manager is not restricted by the board in his appointments. The duties of the two officers are practically the same, consisting of the usual managerial functions. As pointed out by the commission on county government, the two kinds of government are flexible—the county executive being adapted to rural counties, while the county manager is recommended for the wealthier urbanized counties.

The act provides for the following departments: finance, public works, public welfare, law enforcement, education, health, and records. All the county's financial administration is placed in the department of finance, including the budget, the assessment of property for taxes, the collection of taxes, the custody of public funds, disbursement, and the purchase and storage of supplies. As a recognition of the close relation between the state and the county, provision is made that the appointment of a supervisor of assessments, a superintendent of public welfare, a health officer, a superintendent of schools, and a farm and home demonstrator shall be on the recommendation of the state departments or institutions directly concerned.

Under the new plan of government, the following county officers are abolished: county surveyor, coroner, superintendent of the poor, overseer of the poor, constables, the school trustee electoral board, and the in-

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heritance tax commissioner. The coroner's duties will be exercised by the attorney for the commonwealth, who may employ medical assistance when necessary. Constables will be replaced by the sheriff and his deputies. Some counties have both a superintendent of the poor and an overseer of the poor, which is a confusion of functions, as clearly shown in the case of Arlington county, which recently requested the attorney-general to disentangle their duties. Under the new government, the duties of these two officers will be performed by the superintendent of public welfare.

If the principle of local self-government gained a point in the acts providing optional forms of county government, it lost several points in favor of state centralization in new laws which materially strengthen fiscal practices in the counties. Three of these laws make it a misdemeanor and malfeasance in office for a county or city treasurer knowingly to omit from any delinquent list taxes which should be included and a felony for the treasurer to spend money in any way not specifically prescribed by law, and require him to keep his tax books at his office. The object of the first law is to stop the practice of county treasurers holding out delinquent taxes, which has been the principal cause of one county treasurer out of every four being found short in his accounts, in some instances to an amount of over $100,000.

Another important law passed by the recent session of the general assembly corrects to a certain extent the damage done by the supreme court of appeals in the Weston case. In this case, the court held that the governor, acting under Sec. 366 of the Virginia Code, was going beyond his power and usurping a judicial function in summarily removing a county treasurer. The new law provides that the governor may with good reason suspend a county or city treasurer from collecting revenue. Final ouster proceedings, however, must take the regular course in the courts.

State centralization took another step forward in the new law which virtually makes the state the receiver in the case of a county defaulting on its bonds. If a county defaults for over sixty days in the payment of principal and interest on any notes or bonds, the bondholder may petition the governor. If the latter, after investigation, establishes the facts as claimed by the petition, he must direct the comptroller to withhold the further payment of state funds to the county except those which the constitution requires for primary and grammar school grades. The governor may direct the comptroller to apply the funds withheld to cover the amount of the county's default.

In the commonwealth of Jefferson, who clearly defined the principle of local self-government, the tendency seems to be distinctly toward the antithetical principle of centralization. A strong demand has been made that the state take over the public school system. It is just as logical to take over schools as to assume responsibility for roads. Many believe

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that this will be done at the next biennial session of the general assembly. Between the principles of local self-government, even with the county in modern governmental dress, and state centralization, when the latter means that the state pays the bills, the people will vote for the latter principle.

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Kentucky Justices of the Peace. The justice of the peace is one of the most important public officials in Kentucky. He is an officer whose election, compensation, term, and qualifications are set forth in the constitution.[1] He is both a judicial and an administrative officer, presiding over his own court for the trial of petty civil and criminal cases, and serving as a member of the fiscal court, or county board. County judicial, legislative, and administrative functions are rolled into one in the person of the justice of the peace. In this respect, the county system of government in Kentucky has a striking resemblance to the English county of the thirteenth century.

The Kentucky fiscal court is normally a body consisting of the justices of the peace in a county together with the county judge, and having the usual powers conferred upon boards of county commissioners or supervisors in the other states.[2] The constitution provides that each county shall be divided into districts in such manner as the general assembly may direct, and that in each district one justice of the peace shall be elected, with the further requirement that no county shall have fewer than three nor more than eight districts.[3] But in addition, the constitution provides that a county may have a fiscal court composed of three commissioners, elected at large from the county, and the county judge.[4] The process by which a county may adopt this optional form of government is provided for by law.[5] Suffice it to say that in all but nine or ten of the 120 counties of the state, the fiscal court is composed of the county judge and the justices of the peace; in the remainder, the commission plan is in operation.[6] Adoption of the commission form of county government has not meant, except in one case, the disappearance of the justice of the peace as a judicial officer.

[1] Constitution of Kentucky (1891), secs. 99, 100, 106, 142.

[2] *Ibid.*, sec. 144. It should be noted, however, that the justices of the peace compose the fiscal board of the county in Tennessee and Arkansas also. Indeed, these two states, together with Kentucky, are the only ones in which this thirteenth-century English fiscal group is retained.

[3] Constitution of Kentucky (1891), sec. 142.

[4] *Ibid.*, sec. 144.

[5] Carroll, *Kentucky Statutes*, 1922, sec. 1847.

[6] See "The Government of Kentucky," Vol. I, p. 572, *Report of Efficiency Commission of Kentucky, 1924.*

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What sort of an individual is the justice of the peace? In an attempt to shed some light on this all-important legislative, administrative, and judicial officer, a questionnaire was sent to every county judge in the state asking for the number of justices in his county, together with the names, church membership, years of service on the court, previous public offices held, private business, and education of the justices. Also an inquiry was made as to how many justices preside over their own courts in their magisterial districts, and how many had opposition in the last election. Eighty-four of the 120 county judges in the state answered the questionnaire; and since their counties are well scattered over the state, we may accept the reports as giving a true picture of the justices of the peace of the state as a whole.

In the 84 counties, reports were made on 490 justices of the peace, an average of 5.83 justices per county, or a median number of six per county. Twenty-one counties, chiefly urban and mountain counties, have their full quota, i.e., eight, while there are two counties with no justices, and one county with one magistrate. The two counties with no justices, Montgomery and Scott, are organized under the commission plan. It appears that the office of justice is still in existence, but no one cares to offer himself as a candidate for it. Daviess county reports but one magistrate, although it is possible for the county to have its minimum quota of three. Kenton county reports four justices of the peace, with an allowable quota of six, but two magisterial districts are without a justice. If experience in these counties may be made the basis of generalization, we may conclude that the establishment of commission government in a county is a very real influence in emptying the office of justice of the peace of its importance and deterring men from offering themselves as candidates for it. Possibly this suggests the most practical means of doing away with the justices without further constitutional amendment or legislative enactment: simply adopt the commission form of government in the county, and the office of justice of the peace declines in importance to such an extent that no one seeks it. This conclusion, however, loses some of its weight when we notice the number of justices in some of the other commission-governed counties, such as Jefferson with eight justices, Mason with three, and Boyd with four; though at a recent session of the state legislature, the number of justices in Jefferson county was reduced from eight to three.[7] The number of justices in a county apparently bears no appreciable relation either to area or to population. Robertson county, the smallest in the state in both area and population—109 square miles and 3,344 people—has five justices of the peace; while Oldham county, with an area of 180 square miles and a population of 8,494, has eight. This situation is all the more striking when we notice that Kenton county,

[7] "Magistrate Bill is Passed," Louisville *Courier-Journal*, January 21, 1932.

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with an area of 163 square miles and a population of 93,534, has only four justices on its fiscal court; and Daviess county, with an area of 478 square miles and a population of 43,779 has only one justice.

If the 490 justices of the peace in the 84 counties may be used as a basis for generalization, several conclusions may be drawn concerning the Kentucky fiscal court. In the first place, the court is not a means of political advancement. This is shown by the age of the members. The average age of the 421 justices reported on this item is 50.4 years, while the median age is 50 years. The youngest man reported is 26 years of age, while the oldest is 82. There are 12 justices who are 70 or over, while fifteen are under 35, and six are reported as thirty or under.

In regard to the matter of previous public office held, out of the 427 reported, 327, or more than 76 per cent, had held no other office within the gift of the people. This fact, aside from the matter of age, means that the election of these men to the fiscal court is not a reward for prior service to the county or the state. Among the few who had held public office before election to the court, there were six who had been either sheriff or deputy sheriff, five who had been members of the board of education, four who had filled the office of county clerk, three who had served in the state legislature, two each who had served as police judge and as assessor, and 69 who were reported as having served previous terms as justices of the peace.

Another conclusion is that education is not considered an essential qualification for membership in the fiscal court. Of the 422 justices reported on this item, 10, or 2.37 per cent, had no formal education; 368, or 87.1 per cent, had only a common school education; 30, or 7.1 per cent, had the advantages of high school training; and only 14, or 3.31 per cent, claimed to be college men.

It is also to be observed that the office of justice of the peace is reasonably well sought after, and that the personnel of the fiscal court is subject to rather rapid change. Of the 480 justices concerning whom reports were received, 316 had opposition in the last election. In 34 counties, all the justices had opposition, while one-half had opposition in 22 counties, and there were eleven counties in which none were forced to make a campaign for their offices. It appears that the office of justice of the peace is more sought after in the mountain counties and the counties of south-central Kentucky in the region commonly known as the "knob section." The average years of service on the court of the 450 reported on this item is 4.85, while the median is 2 years.

From the inquiry as to the number of justices actually presiding over their own courts for the trial of petty civil and criminal cases, it developed that 229 of the 490 reported, or 46.7 per cent, were actively engaged in the administration of justice in their counties. There are 28 counties, chiefly

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mountain and urban counties, in which all of the justices of the peace preside over their own courts; in ten additional ones, at least one-half hold court; and there are 27 counties in which this feature of the magistrate's activities is left unperformed. This means that of the 65 counties reported on this item, there are but 27 in which "justice" is not administered by the justices of the peace.

Of the 446 justices reported on the item of "private business," 363, or 77.8 per cent, are farmers; 29, or 6.2 per cent, are listed as merchants; and 17, or 3.81 per cent, give their private occupation as "none." In this connection, it is interesting to observe, but unfortunate, that only two of the total number of 363 are reported as being lawyers.

In answering the questionnaire, some of the county judges took occasion to comment upon the operation of the justice-of-the-peace system in their counties. One judge recommends the setting up of minimum qualifications for justices. He writes: "I would like to see the next general assembly of Kentucky enact legislation providing standards of qualifications for justices of the peace, inasmuch as they handle the fiscal affairs of the county as well as preside at trials in which questions of law are involved. Virtually, the business of the entire state, in so far as it affects the counties, is in the hands of the various fiscal courts, and while I am fortunate in having a very splendid group of men, I find that many of the counties, and in fact our own county, is heavily involved in debt because of the lack of business management in the handling of fiscal affairs." Another judge, writing from a commission-governed county, recommends the substitution of commission government for the justice-of-the-peace system. He writes: "This method [commission government] is a pronounced improvement over the old system, since the commissioners are elected from the county at large and a better type of man can be obtained."

Certainly both of these suggestions are worthy of serious thought. There is no real justification for the retention of the English thirteenth-century system of county government in the Kentucky of the twentieth century. What may have been ideal for the age of chivalry is not suitable for the modern age of machinery. But if there are practical and insurmountable obstacles in the way of establishing commission government in our counties, there are few who would disagree with the judge who recommends that minimum qualifications be set up for the members of the fiscal court. There is little doubt that it would mean better government, at lower cost, in the counties of Kentucky.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The chairman of the committee on program for the next annual meeting of the American Political Science Association will be Miss Louise Overacker, of Wellesley College, to whom all communications concerning the program should be addressed.

The annual Godkin lectures at Harvard University were delivered in early December by Mr. Murray Seasongood, president of the National Municipal League, on "Local Government in the United States; A Challenge and an Opportunity."

Count Carlo Sforza will spend the month of March at the University of Wisconsin as Carnegie lecturer on international relations. In addition to general lectures, he will conduct a round table on selected topics.

Governor-elect Edwin C. Johnson has appointed Professor Edith C. Bramhall, of Colorado College, a member of a special committee to make recommendations for the reorganization of the administrative branch of the government of Colorado.

Professor Morris B. Lambie acted during October and November as representative of the governor of Minnesota in negotiating with the Reconstruction Finance Corporation for relief grants for a number of Minnesota counties.

For temporary reasons of health, Professor William Anderson has given up the chairmanship of the department of political science at the University of Minnesota for the remainder of the year, and Professor Harold S. Quigley has been appointed in his place.

Professor A. R. Hatton, of Northwestern University, addressed the Wisconsin Taxpayers' Alliance at its meeting on December 16 on "Constructive Economy in Local Governments."

Professor Earl W. Crecraft, of the University of Akron, will give courses during the coming summer session at Cornell University on American government and government and business.

Professor John M. Gaus, on leave of absence from the University of Wisconsin, will spend the spring and summer in Europe.

Dr. Benjamin Lippincott has been promoted from an instructorship to an assistant professorship at the University of Minnesota.

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Mr. David Mitrany, of the University of London, is remaining at Harvard University this year as lecturer on government and tutor in the division of history, government, and economics.

Dr. Albert J. McCulloch, professor of political science at Albion College since 1919, died on December 9 at the age of sixty-one.

The James-Rowe fellowship of the American Academy of Political and Social Science, with a stipend of $2,000, has been awarded for the coming year to Professor Frederick L. Schuman, of the University of Chicago, who will undertake a study of the foreign policies of the German Republic since 1918.

Professor Martin L. Faust, of the University of Missouri, has been placed in charge of a municipal reference bureau organized as a unit of the extension division of the University. The bureau assists municipalities of the state by supplying them with information and advice on problems that arise in the management of their affairs.

Professor Lloyd M. Short, of the University of Missouri, is serving as a member of the research committee of the Missouri Organization for Reduction in Taxes and Public Expenditures. Professors M. L. Faust and W. L. Bradshaw have assisted the committee in formulating its recommendations.

Dr. E. Pendleton Herring is on leave of absence from Harvard University during the second half-year under a grant from the Committee on Research in the Social Sciences. He plans to complete his study of the relations between organized groups and certain bureaus of the federal government.

Dr. Hubert R. Gallagher, who served as acting assistant professor of political science at Stanford University during the autumn quarter, has returned to Chicago to assume a position with the American Legislators' Association. Mr. Philip H. Taylor, recently at California Christian College, is at Stanford as acting instructor in political science during the winter quarter.

Professor Carl J. Friedrich, of Harvard University, has been appointed visiting professor at the University of Heidelberg for the summer of 1933. His lectures will deal with political theory and public law.

Professor Harold R. Bruce, chairman of the department of political science at Dartmouth College, gave a series of six lectures on contemporary Europe before the Southern California Teachers' Association at its annual meeting in Los Angeles in December.

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In deference to local interests, the Dodge lectures at Yale University this year were devoted to contemporary problems in city government. The five lectures were delivered between January 17 and March 21 by Professors Miller McClintock, Luther H. Gulick, Thomas H. Reed, Howard L. McBain, and Dr. George E. Vincent.

At a conference on political education in secondary schools, held at the University of Nebraska on December 9–10, under the chairmanship of Professor John P. Senning, the guest speakers were Professors John M. Gaus, of the University of Wisconsin, and Earl W. Crecraft, of the University of Akron.

Mr. Charles P. Howland, research professor of government at Yale University, died in New Haven on November 12 as the result of an automobile accident. Mr. Howland discontinued his law practice in New York City in 1927 and went to Yale to teach and carry on research in the field of international relations.

Officers of Pi Sigma Alpha (honorary political science fraternity) for the next biennium are: president, Dean Charles W. Pipkin, Louisiana State University; first vice-president, Professor Charles W. Shull, College of the City of Detroit; second vice-president, Professor J. Catron Jones, University of Kentucky; secretary-treasurer, Professor Harvey Walker, Ohio State University. Professor C. P. Patterson, of the University of Texas, is honorary president.

At a memorial meeting for Professor Graham Wallas on October 19, it was announced that in the new building of the London School of Economics and Political Science a "Wallas room" will be set aside for meetings of discussion societies, and also as a reading room for senior research students. A Graham Wallas prize has also been established by two or three anonymous donors.

In its December issue, the *National Municipal Review* advocated the appointment by the incoming president of a permanent national commission on local government, to serve as a fact-finding and coördinating agency in a period in which a major problem will be that of developing closer relations between the national government and local governments.

The Canadian Political Science Association, revived in 1929, has recently published the *Papers and Proceedings* of its fourth annual meeting. Professor E. J. Urwick, of the University of Toronto, is president, and Mr. S. A. Cudmore, of the Dominion Bureau of Statistics at Ottawa, is secretary.

A school of public administration has this year been organized at the University of North Carolina, with Professor Walter C. Jackson as dean.

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The new school is an extension and enlargement of the school of public welfare established at the University in 1920. Public welfare training will be continued, but training in the larger fields of government and public administration will henceforth receive chief emphasis. The work is to be organized in four divisions: citizenship, public service, public welfare, and research and surveys. In the public service division, training leading to the degree of master of public administration will be given to those desiring to become city or county managers, public health or public welfare officials, etc.

The American group of instructors and students at The Hague Academy in 1931, some thirty in number, decided to form a permanent organization to continue the contacts made in Europe, to coöperate with the Academy in making its work better known, and to increase the use of the unique facilities offered at The Hague to Americans interested in advanced study in international law and international relations. The group includes all who are members, or honorary members, of the general Hague body, the A.A.A. of the Hague Academy. A meeting of the new organization and others interested will be held in conjunction with the meeting of the American Teachers of International Law in Washington in April. Further information may be secured from the secretary, Dr. Edward Dumbauld, Uniontown, Pa., or from the president, Dr. Albert A. Roden, 700 Jackson Place, Washington, D. C.

Twenty-Eighth Annual Meeting of the American Political Science Association. Economic conditions, as well as perhaps the fact that for the first time in some years the Association was meeting apart from other organizations of the kind, caused the registration at the annual meeting held at the Statler Hotel, Detroit, on December 28–30, 1932, to fall to 200, as compared with 353 at Washington in 1931, and 317 at Cleveland in 1930. All parts of the country, however, were represented, and the meeting—devoted almost entirely to round tables and section conferences—was considered a success.

The program, in full, was as follows:

Wednesday, December 28

10:00 A.M. Round-Table Meetings.

1. *Public Opinion and Political Parties.*
   Chairman, Thomas S. Barclay, Stanford University.
   The National Convention: A Criticism and Reappraisal. Finla G. Crawford, Syracuse University. Discussion.

2. *Public Law.*
   Chairman, Oliver P. Field, University of Minnesota.
   "State Responsibility in England, France, Germany, and the United States." F. F. Blachly, Brookings Institution, Washington, D. C. Discussion.

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3. *Political Theory.*

Chairman, W. J. Shepard, Ohio State University.

"Contemporary German Political and Legal Thought." Rudolph von Stammler, George H. Sabine, Cornell University; Hans Kelsen, Carl J. Friedrich, Harvard University; Alfred Verdross, Henry Janzen, Ohio State University.

4. *Public Administration.*

Chairman, Frank M. Stewart, University of California at Los Angeles.

General Topic: "TEACHING PROBLEMS IN PUBLIC ADMINISTRATION."

"Public Administration Courses." (1) "Objectives of Public Administration Courses," John P. Senning, University of Nebraska; (2) "Bases for Course Organization," John A. Fairlie, University of Illinois; (3) "The Content of Beginning Courses in Public Administration," Lloyd M. Short, University of Missouri; (4) "Methods of Instruction, Professional Courses and Courses Preliminary to Public Administration," F. F. Blachly, Brookings Institution; (5) "A Journal of Public Administration," Leonard D. White, University of Chicago.

5. *Legislative Methods.*

Chairman, F. H. Guild, University of Kansas.

"State Legislatures: Their Standing in the Present Crisis."

12:30 P.M. **Subscription Luncheon.**

Chairman, William F. Willoughby, Washington, D. C.

Annual Report of the Committee on Policy. Thomas H. Reed, University of Michigan.

2:30 P.M. **Section Meetings.**

1. *International Relations.*

Chairman, F. A. Middlebush, University of Missouri.

General Topic: "THE DETERMINATION OF FOREIGN POLICIES."

(1) "Factors Governing the Formulation of Foreign Policies," Carl J. Friedrich, Harvard University; (2) "The Changing Influences of Defense on Foreign Policies," Denys P. Myers, World Peace Foundation; (3) "The Formulation of Japanese Foreign Policies," Harold S. Quigley, University of Minnesota.

2. *Local Government.*

Chairman, John F. Sly, University of West Virginia.

General Topic: "FUNCTIONS AND STRUCTURE OF LOCAL GOVERNMENT."

(1) "The Forms and Limits of Expert Service in Local Government," Miller McClintock, director, Albert Russell Erskine Bureau for Street Traffic Research, Harvard University; (2) "The Optimum Size of Local Government Units," William Anderson, University of Minnesota.

3. *Government and Education.*

Chairman, Thomas H. Reed, University of Michigan.

"Political Education by Radio." John Elwood, vice-president, National Broadcasting Company; Levering Tyson, director, National Advisory Council on Radio in Education; Geddes W. Rutherford, Iowa State College.

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4. *Comparative Government.*

Chairman, Walter R. Sharp, University of Wisconsin.

General Topic: "THE CRISIS AND THE NON-DEMOCRATIC STATE."

(1) "Political Aspects of the Crisis in Japan," Kenneth Colegrove, Northwestern University; (2) "The Italian Corporative Experiment from an International Point of View," Max Ascoli, Rockefeller fellow in the Social Sciences; (3) "The Effects of Recent Economic Changes upon Public Administration in Hungary," Zoltan Magyary, director, Hungarian Institute of Public Administration.

5. *Political Aspects of the New South.*

Chairman, Robert S. Rankin, Duke University.

(1) "The South and the Demagogue," George R. Sherrill, Clemson College; (2) "Present-Day Constitutional Problems Relating to Negro Suffrage," Robert R. Wilson, Duke University; (3) "The Present Economic Condition of the South and Its Effect on Party Alignment," Cullen B. Gosnell, Emory University.

8:00 P.M. **Reception and Smoker.**

THURSDAY, DECEMBER 29

10:00 A.M. **Round-Table Meetings.**

1. *Public Opinion and Political Parties.*

Chairman, Thomas S. Barclay, Stanford University.

(1) "Political Party Propaganda Technique: The 1928 and 1932 National Campaigns Compared," Ralph D. Casey, University of Minnesota; (2) "The Special Strategy of the 1932 Campaign," Roy V. Peel, New York University.

2. *Public Law.*

Chairman, Oliver P. Field, University of Minnesota.

"The French System of Administrative Courts, with Suggested American Adaptations." James W. Garner, University of Illinois.

3. *Political Theory.*

Chairman, W. J. Shepard, Ohio State University.

General Topic: "THE POLITICAL AND SOCIAL IDEAS OF THE SUPREME COURT."

(1) "The Supreme Court and American Capitalism," Max Lerner, Encyclopedia of the Social Sciences; (2) "The Political and Social Philosophy of Chief Justice Taney," Carl B. Swisher, Columbia University.

4. *Public Administration.*

Chairman, Frank M. Stewart, University of California at Los Angeles.

General Topic: "PRINCIPLES AND PRACTICE OF PUBLIC ADMINISTRATION," Edwin A. Cottrell, Stanford University; (2) "Source Materials and Use of the Local Administration as a Laboratory," F. G. Crawford, Syracuse University; (3) "Relationship Between the Teaching Problem and Research in the Practice of Administration," Samuel C. May, University of California; (4) "Public Administration Courses for Municipal Officials," Emery E. Olson,

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University of Southern California; (5) "Coöperation with the Governmental Agencies of the Community," S. Gale Lowrie, University of Cincinnati; (6) "Contacts with Public Officials in the Practice of Public Administration," Lent D. Upson, Detroit Bureau of Governmental Research.

5. *Legislative Methods.*

Chairman, F. H. Guild, University of Kansas.
"Modernizing the Legislature."

12:30 P.M. **Subscription Luncheon.**

Annual Business Meeting and Reports of Officers.

3:00 P.M. **Section Meetings**

1. *International Relations.*

Chairman, F. A. Middlebush, University of Missouri.
General Topic: "THE PROBLEMS OF INTERNATIONAL SANCTIONS PRESENTED BY THE SINO-JAPANESE AFFAIR."
(1) "Can International Sanctions be Made Effective?", Clyde Eagleton, New York University; (2) "The Testing of the League," Clarence A. Berdahl, University of Illinois; (3) "The Hoover-Stimson Doctrine of Non-Recognition," Chesney Hill, University of Missouri.

2. *Local Government.*

Chairman, John F. Sly, University of West Virginia.
General Topic: "METHODS IN LOCAL GOVERNMENT."
(1) "The Place of Graphical and Statistical Methods in Local Government Data," George C. S. Benson, Harvard University; (2) "Classificatory Technique in Local Government Research," George A. Shipman, University of West Virginia; (3) "Limits of the Genetic Method in Local Government Research," Ernest S. Griffith, Syracuse University.

3. *Government and Education.*

Chairman, Thomas H. Reed, University of Michigan.
"Legal Requirements for Teaching of Civics," D. C. Shilling, Western State Teachers College, Kalamazoo; J. B. Edmondson, School of Education, University of Michigan.

4. *Comparative Government.*

Chairman, Walter R. Sharp, University of Wisconsin.
General Topic: "THE CRISIS AND SHIFTING POLITICAL RELATIONSHIPS IN GERMANY."
(1) "Economic Interests and Party Realignments, 1929–32," Harwood L. Childs, Princeton University; (2) "The Reëstablishment of a More Independent Executive Power," Carl J. Friedrich, Harvard University; (3) "The Shifting Position of the Länder and Municipalities," Roger H. Wells, Bryn Mawr College.

5. *Political Aspects of the New South.*

Chairman, Robert S. Rankin, Duke University.
(1) "An Analysis of the Election of 1832 in the South and a Comparison

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of This Election with That of 1928," Harriett W. Elliott, The North Carolina College for Women; (2) "The South's New Attitude Toward the Extension of Federal Activities in State Fields," A. B. Butts, Mississippi State College.

8:00 P.M. **Presidential Address.**

"A Program for Research in Political Science," W. F. Willoughby, Washington, D. C.

FRIDAY, DECEMBER 30

10:00 A.M. **Round-Table and Section Meetings.**

1. *Public Opinion and Political Parties.*
   Chairman, Thomas S. Barclay, Stanford University.
   (1) "The Liberals and Our Present Party Alignment," Kirk H. Porter, State University of Iowa; (2) "Criteria for Present Political Parties," E. Pendleton Herring, Harvard University.

2. *Public Law.*
   Chairman, Oliver P. Field, University of Minnesota.
   "The Declaratory Judgment in Public Law," A. R. Ellingwood, Northwestern University.

3. *Political Theory.*
   Chairman, W. J. Shepard, Ohio State University.
   Discussion Meeting.

4. *Public Administration.*
   Chairman, Frank M. Stewart, University of California at Los Angeles.
   Discussion Meeting.

5. *Comparative Government.*
   Chairman, Walter R. Sharp, University of Wisconsin.
   General Topic: "THE CRISIS AND POLITICAL REALIGNMENTS IN THE BRITISH COMMONWEALTH OF NATIONS."
   (1) "Great Britain," Eugene P. Chase, Lafayette College; (2) "Canada," Escott Reid, Canadian Institute of International Affairs; (3) "Australia," Kenneth O. Warner, University of Arkansas.

12:30 P.M. **Subscription Luncheon.**

Summary Statements by Chairmen of Round Table and Section Meetings.

The Secretary-Treasurer reported a total membership of 1,888, composed as follows: life members, 46; sustaining members, 16; annual and associate members, 1,826. Notwithstanding increased cancellations, largely on account of the depression, there was a net loss of only six. The Secretary-Treasurer's financial report for the year showed an income of $9,386.69 and expenditures of $8,716.67, and a budget for 1933 was adopted estimating income at $8,880 and expenditures at $8,300.

At the annual business meeting, officers for 1933 were elected as follows: president, Isidor Loeb, Washington University; first vice-president,

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Robert Luce, Waltham, Mass.; second vice-president, Charles G. Haines, University of California at Los Angeles; third vice-president, Walter F. Dodd, Yale University; secretary-treasurer, Clyde L. King, University of Pennsylvania; members of the Executive Council for the term ending December, 1935: Clarence A. Berdahl, University of Illinois; Edith C. Bramhall, Colorado College; Frederick F. Blachly, Brookings Institution; Elmer D. Graper, University of Pittsburgh; and Joseph P. Harris, University of Washington.

Continued publication of the REVIEW as a bi-monthly having been endorsed by the Executive Council and Committee on Policy, the Managing Editor reported various economies that had been decided upon, giving promise of continuance through 1933 in substantially the same form as in 1932, notwithstanding anticipated shrinkage in the revenues of the Association. Members of the Board of Editors retiring at this time were Clarence A. Berdahl, A. C. Hanford, and Clyde L. King. Members elected as their successors are William Anderson, of the University of Minnesota, William S. Carpenter, of Princeton University, and Frederick A. Middlebush, of the University of Missouri.

As reconstituted for 1933, the Committee on Policy, under the general chairmanship of Thomas H. Reed, consists of the following: Subcommittee on Research, Arnold B. Hall (chairman), Charles A. Beard, Edward S. Corwin, Charles E. Merriam; Subcommittee on Publications, B. F. Shambaugh (chairman), Walter J. Shepard, Ben A. Arneson; Subcommittee on Personnel, William Anderson (chairman), Luther Gulick, John M. Gaus; Subcommittee on Political Education, Harold W. Dodds (chairman), Arthur N. Holcombe, Earl W. Crecraft. Ex-officio members are Isidor Loeb, Clyde L. King, and Frederic A. Ogg.

Among reports received and filed were those of Thomas H. Reed as chairman of the Committee on Policy (see below); William Anderson as representative in the Social Science Research Council; John A. Fairlie for the *Encyclopaedia of the Social Sciences;* and Frederic A. Ogg as representative in the American Council of Learned Societies and on the board of directors of *Social Science Abstracts.*

Discussion of the place of meeting in 1933 revealed considerable preference for Washington. A committee appointed by the Council, however, reported a plan for a poll of the Association's membership at the time when the yearly bills were sent out, covering both time and place of meeting over a series of years and also the nature of programs; and an inquiry of this nature was duly authorized. It was reported that, the plan for an international congress of the social sciences at Chicago during the summer of 1933 having been abandoned, there would be no further consideration of a proposed meeting of the Association in conjunction with a larger gathering of the kind.—F. A. O.

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REPORT OF THE COMMITTEE ON POLICY OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION FOR THE YEAR 1932

THOMAS H. REED, GENERAL CHAIRMAN
University of Michigan

The work of the Association's Committee on Policy in 1932 covered, on the whole, an even wider sphere than in 1931.

1. *Subcommittee on Publications.* This subcommittee has been practically quiescent since the annual meeting of last year. The experiment of publishing the REVIEW as a bi-monthly, facilitated by a contribution of $600 by the Committee on Policy, has been carried on, and is referred to more at length in the report of the managing editor submitted to the Executive Council and the Association. The Committee has provided for the continuation of this subsidy in 1933.

A publication outlet for brief popular discussion of current political topics has been found in the reprints of radio addresses published by the University of Chicago Press. It is impossible, of course, altogether to reconcile the requirements of a radio address and those of publications of permanent value. To a surprising extent, however, good radio speeches have turned out to be valuable in printed form. Up to the present time, 30 of these addresses are available in print. By the end of the current academic year, there will be 54 of them. It is earnestly recommended that the subcommittee on publications consider these radio addresses with a view to their improvement as publications and their use as supplementary reading in high school and college classes.

2. *Subcommittee on Personnel.* The work of this subcommittee has been divided into three parts.

(a) *The Placement Service.* This was taken advantage of by more than one hundred young political scientists during the past year. The subcommittee has recommended the transfer of the service to the office of the secretary-treasurer, and that a fee be charged those enrolling in it; and at the meeting of the Committee on Policy on December 27, provision was made that the service be so transferred, at a date to be agreed upon by Professors Anderson and King. The proposal of a registration fee was not endorsed, but hereafter the service is to be confined strictly to persons who are members of the Association.

(b) *The Project for a Comprehensive Study of Training for the Public Service.* The subcommittee planned very carefully an outline of such a study, with a budget adequate to carry it out. This was presented to certain foundations, which received the idea sympathetically but were in no position to provide funds for so large a study at this time. With the approval of the full committee, the subcommittee has decided that, rather

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than wait indefinitely for good times, immediate steps be taken to get as much as possible done by assigning portions of the task to volunteers.

(c) *The Report on the Personnel Problem of the Political Science Profession.* Professor Anderson indicates that this will be completed within the next few months. He says: "The report, when ready, will first be circulated in rough draft among the members of the subcommittee and the officers of the Committee on Policy. Later, it will be put into finished form and perhaps mimeographed for distribution among the members of the Association, if funds permit. It will cover in a general way problems of selection, training, tenure, salaries, and conditions of employment for those political scientists engaged primarily in college and university teaching. It will touch upon the membership problems of the American Political Science Association and other subjects. In order to obtain more complete information than we can get from other sources, and in order to elicit an expression of views by those now in the profession on some of the problems presented, a questionnaire is being prepared to be circulated among those now engaged in college and university teaching in this field. The subcommittee on personnel bespeaks the charitable consideration and the sympathetic aid of those to whom the questionnaire is sent. We realize that any questionnaire is to some extent an imposition, and a tax upon the patience and time of those who answer it. We feel, however, that the information derived may sometimes be worth more than the effort expended in obtaining it. I hope that this will be the case in this instance."

Because of the state of his health, Professor Anderson has asked to be released from the chairmanship of the subcommittee, although he is willing to retain charge of the study of professional opportunities until it is finished and of the placement service until it is turned over to the secretary-treasurer. It is needless to say that the Committee on Policy is signally aware of the great services rendered by Professor Anderson, which we wish gratefully to acknowledge. We can only hope that his health will soon be completely restored.

3. *Subcommittee on Research.* This subcommittee has carried on the preparation of a "Handbook for Political Science Research Students" under the direction of Dr. Willoughby, assisted by Miss G. A. Churchill. The portions of the original comprehensive scheme relating to organizations in the United States operating in the field of political science, special governmental surveys, and university series of studies in political science are now well on the way to completion. The question naturally has arisen as to whether the original design of the committee should be carried out in full, or whether the three portions of the undertaking referred to should be completed and arrangements made, if possible, for their publication. The Committee on Policy has adopted the second alternative, and has provided for the employment of a competent person,

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on very favorable terms made possible by the coöperation of the Social Science Research Council, to complete the manuscript and prepare it for the press.

Some progress has likewise been made in the preparation of a "Program of Research in Political Science." The original effort of the committee to secure essays from a considerable number of the older members of the Association on the directions which research in political science might most profitably take met with such a meager response, as reported last year, that the attempt was abandoned. Dr. Willoughby thereupon began the preparation of a manuscript of ninety-odd pages setting forth his views as to the studies it is desirable to have made in general political science, national and state government, and public administration. He has made nearly one hundred suggestions of studies. Other members of the subcommittee and other members of the Association have been, or will be, asked to contribute similar manuscripts covering other fields of political science, particularly municipal and local government, constitutional law, administrative law, international law and relations, and political parties and elections. The Committee on Policy has set up in its budget for 1933 a reserve of $1,200 to provide, if necessary, for the cost of publication.

4. *Subcommittee on Political Education.* This subcommittee presents its report in two sections.[1] The first, by Professor H. W. Dodds, relates to the conferences between politicians, laymen, and experts. Four such conferences were held in 1931 and ten in 1932. Those in the latter group were held at Portland, Ore., Lexington, Ky., Lincoln, Neb., Minneapolis, Minn., Cazenovia, N. Y., Seattle, Wash., Delaware, Ohio, Baton Rouge, La., Princeton, N. J., and Richmond, Va. The conference at Princeton on retrenchment in public expenditures was the only one on a national scale, the others dealing specifically with the problems of a particular state or region. Attention should be called also to three other conferences not under committee auspices but following the committee's model, two at Charlottesville, Va., for city officials of that state, and one at Pennsylvania State College in connection with the Pennsylvania Institute of Urban Affairs.

The participants in these conferences have been unanimously enthusiastic as to their benefits. Small, carefully selected groups, meeting privately without publicity, have developed frank and open discussion of public questions elsewhere impossible. They have brought politicians and academic men together most efficiently. For the men from small institutions, and for the younger men in the large universities, the contacts provided with practical politicians and administrators have been especially valuable.

[1] The advisory group on pre-legal studies held no meetings during 1932.

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In his report, Professor Dodds says: "The reports and remarks on the conferences which have been received have been unanimously favorable. The participants, both the academic and the practical, have been enthusiastic as to their benefit. For the teacher of politics, they are to some extent a substitute for field work, and for the teacher of politics in the smaller institutions where the opportunities for field work are limited they are invaluable; they develop a personal acquaintance between public officials and political scientists who have frequently been unknown to each other previously; they give the academic participant a greater understanding of the practical details of politics, the difficulties confronting political leaders, and their mental processes. The politician finds that the political scientist is not always an idle theorist, bent on Utopian reform, but that he is able sometimes to suggest a valuable progressive attitude. These conferences provide a common meeting ground for both groups to discuss questions in which both are interested. In almost every instance where a conference has been held, a request has been made for a repetition of the experience. The conferences already held have been experimental. The experience they have been affording serves as a guide in the arrangement of future meetings. For instance, it has been demonstrated that it is advisable, where possible, to hold the conferences away from cities, in a quiet spot where the attention of the members cannot easily be diverted, and to house all guests under one roof; that the prohibition of publicity makes for frank conversation; that a capable chairman can manage a gathering of as many as thirty without difficulty; that the personnel should be carefully selected and balanced, without too many "headliners" to overawe the other invitees; that formal papers or speeches or any monopoly of time by one member is an evil; that a carefully prepared statement of the questions to be discussed and points involved, distributed in advance, facilitates the discussion; that interest of the members is difficult to sustain beyond a two-day conference, but that it is well to hold continuous sessions for that duration of time."

The subcommittee has discovered that under existing financial conditions it is impossible to expect many such conferences to be financed locally. In most cases, it will be necessary, as in all ten instances last year, to offer the organizing group some financial assistance. The maximum fixed for last year was $400, which has proved in each case to exceed somewhat the sum actually spent. The average cost of the ten conferences has not much exceeded $350. The subcommittee asked for a sufficient appropriation to provide ten or eleven conferences for next year, and this has been granted.

The other division of this subcommittee reports through Professor Crecraft on the work on citizenship training through the schools. This branch of the subcommittee held in 1932 four conferences in which

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political scientists met with educational administrators, high school civics teachers, etc., to discuss the place of government in secondary education. These conferences were held at Lincoln, Neb., Cazenovia, N. Y., Delaware, O., and Ewing, N. J. They have proved especially valuable in bringing together two groups which in the past have clearly misunderstood one another; they have led to the appointment of committees to outline programs of civic study, and look toward an authoritative definition by this Association of what contribution political science can make to citizenship training.

It is evident that the activities of both branches of the subcommittee on political education could be greatly extended if more money were available. We are of the opinion that considerable good can be done by placing political scientists on the programs of educational meetings and by developing the secondary school side of state and regional associations. Such activities, however, require constant executive direction which cannot be given by the voluntary efforts of committee members. Only four contacts with regional associations were made in 1932, i.e., with the political science section of the Michigan Academy of Science, Arts, and Letters, to which Professor Paul Wager spoke; with the Pennsylvania Political Science Association, whose members were addressed by Dr. F. F. Blachly; with the Southern Political Science Association, to which Professor J. W. Garner was sent as a speaker; and with the Iowa Political Science Association, at whose annual meeting Professor L. D. White was present. As will appear later, the greater part of the time of the very competent secretary of the subcommittee on political education has been diverted to the radio activity of the Association, in which an emergency arose of apparently the greatest significance. This has not in any way curtailed the activities of the subcommittee as previously carried on, but it may be said to have helped to limit these to the lines laid down last year.

5. *The Radio Programs.* The larger part of the energy of the general chairman during the last year has gone into an activity outside the scope of any of the subcommittees—the promotion of the "You and Your Government" series of radio programs. In December 1931, the annual meeting of the Association, acting on the recommendation of the Committee on Policy and the Council, voted to coöperate with the National Advisory Council on Radio in Education in accepting the offer of the National Broadcasting Company of a half-hour a week of radio time over a four-year period for civic education, and to endorse the steps previously taken by the general chairman in the organization of the Committee on Civic Education by Radio. This committee, consisting in a majority of members of the Political Science Association, together with some economists, educators, and public men, was to be responsible for the preparation and presentation of the programs, and the National Advisory Council on

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Radio in Education assumed responsibility for the money necessary for committee expenses, the payment of honoraria and expenses of speakers, and the proper advertising of the programs. A budget for this purpose was prepared on a liberal scale, and preliminary steps were taken to organize the program. Inevitable delays intervened, however. It was found to be next to impossible to obtain special gifts for the purpose, and it was not until about the first of March that the first contribution of $5,000, with a promise of $2,500 additional if another $5,000 were raised, was received. The Radio Council also was handicapped through the failure of a large anticipated contribution to its general work.

The first series of broadcasts actually began on April 5, and continued for fourteen successive Tuesday evenings. During April and May, the programs were under the joint auspices of the Committee on Civic Education by Radio and the National League of Women Voters, to whose time on the air the committee succeeded. For the promotion of the program, the Committee on Policy lent the services of Miss Doris Darmstadter, secretary of the subcommittee on political education, with the understanding that we would be reimbursed if and when funds were available. Certain travelling and other expenses of the general chairman and others were also paid by the Committee on Policy under a similar agreement. Two hundred thousand copies of the folder announcing the series were printed and distributed, with the coöperation of a large number of civic organizations and school officials. A "Listener's Handbook" was prepared, containing an outline of each broadcast and a selected bibliography of the subjects treated, and was sold by the University of Chicago Press at twenty-five cents a copy, while reprints of the broadcasts were sold at ten cents each.

The topics treated in this spring series were general in character, and in all instances related to the coming presidential campaign. They were well received, and it was found to be the unanimous opinion of the Committee on Policy that they should be continued this fall. The question of how to continue them, however, proved a very difficult one. The Radio Council, while it managed to pay all the other bills incurred, was unable to pay the honoraria promised to speakers without receiving the conditional gift of $2,500 previously referred to. No other money seemed to be available, after an extensive canvass of the most promising possibilities. In this emergency, the general chairman suggested to the Committee on Policy that we divert to the support of the You and Your Government program for the year from June 1, 1932, to May 31, 1933, the sum of $5,000 made up as follows:

A portion of the services of Miss Darmstadter..... $3,000.00
(She has continued to render the services needed by the subcommittee on political education)

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Cash	1,256.14
Sum due from Radio Council	743.86
Total	$5,000.00

The cash was to be contributed by deductions from the appropriations of the various subcommittees and the unappropriated balance as follows:

Subcommittee on Research	$400.00	
Political Education (Civics Study)	200.00	
Publications	200.00	
Personnel	200.00	
Unappropriated Balance	256.14	
		$1,256.14

The Committee voted unanimously by mail its desire to see the You and Your Government program continued, and with only one dissenting voice the Committee authorized the transfer of funds recommended by the general chairman.

As a result, we were able to go ahead at once with the preparation of the program for the fall series, which began on the Tuesday after Labor Day. The pre-election series of nine broadcasts was entitled "Government in a Depression," while the post-election series was devoted to "Constructive Economy in State and Local Government." The first broadcast of this latter series presented a summary of the report of the committee on constructive economy of the National Municipal League, and was followed by six broadcasts amplifying various points in this report. In other words, an attempt was made to deal with relative thoroughness with a single subject. Another difference in the fall's broadcasts as contrasted with the spring series was a reduction in the number of single half-hour addresses and the introduction on several occasions of round-table discussions in which three or more persons engaged in an informal conversation before the microphone. It has been pretty clearly demonstrated that the public prefers three ten-minute talks to one half-hour talk, and a round table to either. The program announced for the period for January 3 to June 15, 1933, contains but two broadcasts with a single speaker. The number of round tables we can hold has been limited by the funds available to pay travelling expenses. It is necessary to assemble the participants in a round table several hours in advance for a rehearsal.

The fall and winter series are being put on by speakers who receive no honoraria, and the members of the Committee on Civic Education by Radio are giving their services gratuitously. These services, in the case of the chairman, amount to at least one quarter of his working time. The promotion expense has been reduced to a minimum. Only 80,000 circulars describing the full program were distributed, but Miss Darm-

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stadter has been very successful in enlisting the help of organizations publishing magazines or bulletins, and the publicity department of the National Broadcasting Company has secured extensive newspaper notice of the series. The University of Chicago Press distributed the listener's handbook for the fall series free to all applying for it. The response from the public has been more ample in the fall than in the spring series. The You and Your Government series is conquering a place for itself in spite of all obstacles.

The network given us has embraced about forty stations from coast to coast, the chief gaps being in the Detroit and St. Paul-Minneapolis areas. A change of time from 8 to 8:30 to 7:15 to 7:45 E. S. T., necessitated by the business exigencies of the National Broadcasting Company, will allow us a somewhat better station distribution for the winter series. In our new position we will come between two of the most popular commercial programs on the air, Amos and Andy and the Goldbergs. This juxtaposition is considered in radio circles a very favorable circumstance for our program. It certainly presents a dramatic contrast.

As to the number and character of listeners to these programs, there are no reliable indices. The best we can do is to figure from the number of handbooks, reprints, etc., distributed by the University of Chicago Press. Mr. Levering Tyson, director of the National Advisory Council on Radio in Education, estimates on the basis of 262,977 of all Radio Council material thus distributed in the year ending July 1, 1932, that 2,500,000 persons listened to the Council's programs in that period. The factor he uses is twelve listeners to every one who finally secures a handbook or a reprint. The formula of the broadcasting companies as to the relation of those who write for material to those who listen is from one to 100 to one to 1,000. So Mr. Tyson's figure seems very conservative. The total distribution of You and Your Government material for the spring series was 30,242, and for the fall series to December 12 (covering 13 broadcasts), 21,589, or 51,831 altogether. Using Mr. Tyson's factor would give us a total of more than 600,000 listeners who have tuned in an indeterminate number of times from one to thirty. This is as near to accuracy as one can come, and is doubtless well within the facts. The distribution of the "fan" mail which comes from every rank in society and every quarter of the country indicates wide general listening.

Further information is available as to the degree of interest among certain special groups. The programs have received the interested support of the United States Bureau of Education. Commissioner Cooper wrote to all state superintendents in the spring of 1932 suggesting the use of the You and Your Government series in connection with civics instruction. This fall the Bureau sent out 18,500 copies of the program to county and city superintendents, principals, etc. Some state superintendents have

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similarly coöperated in their respective states. The general chairman was given a place on the program of the National Education Association at Atlantic City last June, and numerous state educational bodies have furthered the program through their publications. As a result, we have had correspondence with superintendents, principals, and teachers indicating the use of these programs in connection with civic study in at least 43 states. Enough has been accomplished to demonstrate that radio has value as a means of supplementing textbook and teacher. The best results, however, would require some qualified person to be constantly active in the promotion of this branch of the work, devising and arranging tests, etc. A few thousand dollars spent in this direction would give more practical information on the value of radio in education than could be obtained in any other way.

There has been a good response from such organizations as the League of Women Voters, the Council of Jewish Women, etc., among whom several listeners' groups have been formed Listeners' groups have also been developed by junior chambers of commerce and other civic organizations. The "Constructive Economy" series has attracted wide attention among taxpayers' leagues, chambers of commerce, and similar organizations. Within the first week of the Seasongood-Hatton broadcast of November 15, we had forty letters from such sources asking for reprints of the addresses, in some instances in large quantities, and every week since there have been a number of similar requests. That the newspaper notices calling attention to the broadcasts and the announcements made weekly over the air are heeded is indicated by the fact that each broadcast brings in its individual crop of comments. When Paul Mazur and Henry Hart speak, we get letters from bankers; when Charles Beard and Senator Wagner speak, we get letters from social workers; while Governors Byrd and Gardiner brought their own group of enthusiasts.

It should be remembered that the publicity incident to broadcasting is cumulative in its effect. Many more people know of the You and Your Government program today than knew of it on July 1. Every series as it is announced, and every broadcast as it goes out over the air, adds to the circle of those who know where to turn for a good talk on government. Of course what we are doing is frankly experimental in more ways than one. It is too early to present many of the results of this experimentation. By another year, we will be prepared to report more specifically what we have discovered.

The character and usefulness of the reprints of the addresses by the University of Chicago Press have already been referred to, as well as the total figures of distribution to date. The average distribution of reprints of the spring series, omitting John Finley's address, which was distributed free, was 1,480. The average distribution for the first 13 broadcasts last

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fall, up to December 12, was 856. There was, however, last spring a free list of 325 per broadcast, which has now been abolished. When complete returns are in for the sixteen broadcasts of last fall, the distribution will probably somewhat exceed that for last spring less the free list.

I would specially call attention to the loyal way in which the National Advisory Council on Radio in Education has fulfilled its obligations to the You and Your Government series and the Political Science Association. It has supplied the office space, clerical assistance, most of the postage, and a part of the printing. For the winter series, it did even more from its meager funds. The relationship has proved a very happy one, and we owe a great deal to Mr. Tyson and his board for their steady coöperation.

The budget adopted by the Committee on Policy for 1933, and approved by the Council and the Association, is as follows:

Available for appropriation		$17,250
General Chairman	$1,200	
Radio Activity	1,250	
Subcommittee on Research	2,200	
Reserve for publication	1,200	
Subcommittee on Publications		
1. General Expense	400	
2. The REVIEW	600	
Subcommittee on Political Education (both divisions)	5,900	
Subcommittee on Personnel	1,700	
	$14,450	14,450
Unappropriated (General Fund)		$2,800

In concluding this report of the activities of the Committee on Policy, I wish to acknowledge my indebtedness to the members of the committee who have by their endeavors made the record of achievement possible. The American Political Science Association has become more than a name, a periodical, and an annual meeting. It has become a vital force in the life of our country. Its name and its representatives are heard on the air from coast to coast every week. Its members have sat down in intimate contact with the rulers of the land. Its point of view is increasingly understood and respected by educational authorities. Its personnel is more and more finding its way into the places in normal schools, teachers colleges, and small colleges where before political science as a special subject had no recognition. Its REVIEW is more effective and more frequent in its effect. And greater things yet are in process of planning for the promotion of research.

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FINANCIAL STATEMENT, COMMITTEE ON POLICY, AS OF DECEMBER 15, 1932

Balance Sheet

Receipts		
Final balance, 1931	$3,407.88	
Carnegie Corporation grant for 1932	15,000.00	
Interest on bank deposits	83.91	
Total Receipts	$18,491.79	$18,491.79
Expenditures		
Office	$8,053.31	
Travel	6,164.65	
Cash to National Advisory Council on Radio in Education	1,256.14	
Total Expenditures	$15,474.10	15,474.10
Balance, December 15, 1932		$3,017.69

Reconciliation

Balances in cash revolving funds		
General Chairman	$300.00	
Subcommittee on Political Education	50.00	
Subcommittee on Personnel	100.00	
Balance in Check Book as reported by the Secretary-Treasurer on December 15, 1932	2,567.69	
	$3,017.69	$3,017.69

Appropriation Statement

General Committee Fund

Receipts			
Unappropriated balance	$1,767.88		
Transfers from appropriations	1,000.00		
Interest on bank deposits	83.91		
	$2,851.79	$2,851.79	
Expenditures			
Office	$ 57.38		
Travel	1,003.41		
Cash to National Advisory Council on Radio in Education	1,256.14		
	$2,316.93	2,316.93	
Balance		$534.86	$534.86

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General Chairman

Receipts			
Appropriation		$1,400.00	
Expenditures			
Office	$760.38		
Travel	520.92		
	$1,281.30	1,281.30	
Balance		$118.70	118.70

Subcommittee on Research

Receipts			
Appropriation		$3,000.00	
Expenditures			
Transfer to general fund	$ 400.00		
Office	1,821.05		
Travel	153.50		
	$2,374.55	2,374.55	
Balance		$ 625.45	625.45

Subcommittee on Political Education, General Account

Receipts			
Appropriation		$8,440.00	
Expenditures			
Office	$3,851.66		
Travel	3,475.29		
	$7,326.95	7,326.95	
Balance		$1,113.05	$1,113.05

Subcommittee on Political Education, Civics Study

Receipts			
Appropriation		$1,200.00	
Expenditures			
Transfer to general fund	$200.00		
Office	84.72		
Travel	784.35		
	$1,069.07	1,069.07	
Balance		$130.93	130.93

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Subcommittee on Publications

Receipts			
Appropriation		$1,000.00	
Expenditures			
Transfer to general fund	$200.00		
Office (REVIEW fund)	600.00		
	$ 800.00	800.00	
Balance		$200.00	200.00

Subcommittee on Personnel

Receipts			
Appropriation		$1,600.00	
Expenditures			
Transfer to general fund	$ 200.00		
Office	878.12		
Travel	227.18		
	$1,305.30	1,305.30	
Balance		$294.70	294.70
Aggregate balance			$3,017.69

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The Growth of Political Thought in the West: From the Greeks to the End of the Middle Ages. By Charles Howard McIlwain. (New York: The Macmillan Company. 1932. Pp. vii, 417.)

Professor McIlwain has executed with remarkable success his plan to present "in moderate compass . . . a concise and well-ordered analysis of all essentials" in the movement of political ideas from Greek antiquity to the end of the fifteenth century, keeping the history "in closest touch with the actual political developments and the institutional growth." A specific promise of the title, repeated with emphasis in the preface, to set forth the succession of ideas as a "growth" or "development" has not been, and presumably could not have been, fully carried out. The political issues of the Middle Ages still appear for the most part to be different from those that were at the forefront in ancient Greece and Rome, and different types of men appear to be discussing them; there remains also an impression of considerable discontinuity between Greece and Rome. Professor McIlwain's accounts show adequately, however, the unities within the several periods. The first four chapters are brilliant expositions of "The Beginnings," Plato, Aristotle, Cicero, and Roman juristic ideas; and the two lengthy chapters on the Early and the Later Middle Ages give sufficient attention to the several writers and supply, at appropriate places, clarifying résumés of general ideological or institutional fields: feudalism, the rights of private property, the doctrine of dominium; the character and development of the dispute between ecclesiastical and political authorities; ideas on the relation of law to custom, and of the king, and "the people," to law; the nature of "sovereignty" in medieval conceptions. The work is well-documented, and there is considerable detail; but there are no superfluous references, and the relation of the detail to important themes is always clear. At every point the author shows his mastery both of the original texts and of the interpretations by others. He uses the latter freely and effectively when they seem satisfactory, but he is never subservient to them. In some places his own interpretation is set forth largely as a criticism of the mistakes of others. In a few of these places the enthusiasm of his attack leads him, the reviewer believes, too far. Two examples of this will be mentioned in order to indicate the only sort of caution the reader of the book needs to have in mind.

In discussing the fourteenth-century *Defensor Pacis*, Professor McIlwain argues that Dictio I (whose principal authorship he attributes, adopting and extending the arguments of Miss Marion Tooley, to John of Jandun rather than to Marsiglio of Padua) has been badly misinterpreted; in its declaration that the "*legislator*, or prime and effective cause of law," is "the *populus* or body of citizens, or the *valentior pars* thereof,"

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valentior must be translated as "dominant" rather than as "major" or "majority," for the author went on to say that he had in mind "the number and the quality of the citizens." From this, Professor McIlwain proceeds to a vigorous criticism of those whom he supposes to find in the *Defensor* a clear advocacy of unlimited government by popular majorities—a principle which he regards as "the essential doctrine of modern democracy." The *Defensor*, he says, has "no modern touch at all," "absolute equality" was "abhorrent" to its author, and the context shows that *pars* was used "to mean a definite portion of the *populus*, which by consent of all may act for (*representare*) it all, because it is difficult or impossible for all to agree on anything." Well, this latter phrasing embodies a conception that would fit a good many influential statements of democratic doctrine in modern times. Some modern democrats, it is true, have held extremely individualistic ideas of government by consent; but what responsible interpreters of the *Defensor* have supposed that such theorists could find in that treatise the essentials of their doctrine? Most of the theorists have held principally that the general body of persons or citizens (often variously qualified explicitly or by implication) have the right to institute, alter, and be represented in, their government. No broad generalization on "modern" democracy should be made without some intimation of the ideas of Milton, Locke, Jefferson, and Mill. Moreover, what does Professor McIlwain make of the particular reasons offered in the *Defensor* (I, xii, 5–8) in support of its general theme, if *qualitas* is so much more important than *quantitas* that only "dominant" can render the meaning of *valentior*? After all, the author of the *Defensor* did say that he had in mind the number as well as the quality of the citizens. In short, Professor McIlwain seems somewhat extravagant when he says that "there is nothing of democracy" in the *Defensor*, when he implies that there is a widely prevalent interpretation of the treatise as setting forth an idea of unqualified majority rule, and when he indicates that such is the essential idea in the modern doctrine of democracy.

In his last chapter, devoted mainly to a discussion of medieval ideas on sovereignty and on the relation of the king's authority to law, Professor McIlwain brings up the issue as to whether Bodin (in the late sixteenth century) is rightly charged, by some of his contemporaries and by "most English and American historians of political thought" today, with responsibility for a departure from the medieval conception of an authority limited by divine law and the law of nature, or the customary or "common" law, and with the introduction of an "eccentric" conception of "seigniorial," "despotic," "arbitrary" authority, free from all restraint by law. His exculpation, in familiar terms, of Bodin from such a charge (has it actually been made by most English and American historians?) seems valid. But here again he appears to resort to over-statement in his

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general criticism. No one can object to his challenge of those who identify Bodin's theories with the "slavish political doctrines of Hobbes;" but his own grouping of Hobbes and Austin in "this fatal identification of sovereignty with might" seems equally bad. Austin, it is true, characterized Hobbes' political treatises as "masterly" and defended them against what he regarded as misinformed criticisms. But he himself pointed to Hobbes' "capital error" in inculcating "too absolutely" the obligation of submission to "present or established government," and in another passage he showed why he regarded the proposition that "right is might" as either "a flat truism affectedly and darkly expressed" or "highly false and absurd." If an historian is tracing a formal conception of sovereignty, he may, defining his terms, place the three writers together. When, however, he characterizes or appraises their political philosophy more generally, he should recognize the significant points of difference, and should be consistent in his discriminations. Austin's warm praise of Hobbes doubtless excuses a special grouping of the two, but not an omission of any reference to the fact that, while Hobbes sought, by an analysis of the basic springs of human action, to invalidate claims of rights against a sovereign in power, Austin did no such thing but recognized both moral and religious duties of sovereigns to their subjects.

Professor McIlwain's lively partisanship, at these and a few other points, detracts not at all from the clarity and interest of his scholarly book, which, it seems certain, will be generally accepted as the most useful history of ancient and medieval political thought that we have. By this excellent achievement he incurs responsibility for the demand that he carry forward his history.

FRANCIS W. COKER.

Yale University.

A Guide Through World Chaos. BY G. D. H. COLE. (New York: Alfred A. Knopf. 1932. Pp. xi, 554, xix.)

Mr. Cole's book is a study in method as well as in economics. He does not pretend to be engaged in the passionless pursuit of passionless truth—that naïve performance popular in certain quarters of the academic world where inquirers do not inquire into the nature of inquirers and seek to discover how they got that way. He does not claim that the laws of social science flow inevitably out of the "data" and give sure instruction to statesmen. In his introduction, he asks squarely: "Who can either know everything or believe nothing?" Moreover, he writes for the intelligent and open-minded citizen who wants to understand how the world fell into its present plight and to discover possible roads out of the morass. The student who is merely preparing to pass an examination in the subject of economics (or the professor who merely earns a livelihood teaching it) does not here enlist the interest of Mr. Cole.

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The volume before us combines both the statics and dynamics of economic life. It does not profess to be a collection of the laws of economy considered as a plane surface arrangement of things fixed in time. It does, to be sure, examine the chief topics which are covered in more formal treatises: the productive system, cost and profits, prices and price levels, money credit and capital, unemployment, foreign trade and fiscal policy, public finance and taxation, and economic organization—the stock markets, the joint stock system, trusts and cartels, shareholders, technicians and workers, and the future of collective bargaining. Under these heads Mr. Cole considers the essential data which are inevitably in the picture and must be considered by any economist—orthodox, gentile, or Hebrew.

But Mr. Cole goes beyond the cross-section under his microscope. He looks backward in an effort to discover how it arrived at its present formation, discloses the rise of its internal contradictions, and seeks to lift the veil on the future. Hence there are chapters on the evolution of capitalism and the economic consequences of the war, on the challenge of Russia, the alternatives to capitalism, and the present world outlook. Certain choices seem to be before mankind. It can tinker up the old capitalist system and perhaps muddle along with it for an indefinite period, depending upon the degree of its ripeness. The heart of the business, as Mr. Cole sees it, is the increase of consuming power. In the United States, he believes, this can be brought about without a drastic change in the form and balance of the productive system as it now exists, owing to the wide diversification of American economic life. "American capitalism is still a growing force which has not yet exhausted its potentialities. European capitalism, on the other hand, is a dying force which has already demonstrated its incapacity to take upon itself the necessary tasks of collective reorganization."

In other words, Mr. Cole expresses the fundamental conclusion reached by Mr. Gerard Swope, of the General Electric Company, in 1931: if industry cannot provide a collective system that will prevent economic disasters, the government will. In Europe, capitalism has failed to do this, and the government has begun. Mr. Cole thus concludes that by the nature of things our choices are at bottom limited to capitalism and socialism, and he chooses the latter. He admits that the difficulties of administration in a socialist state are enormous, but since capitalism does not seem to be able to summon the brains necessary to make its system work, he thinks that it would be better to run the risks of the former than to endure the demonstrated evils of the latter. The possibility that both systems may fail and Western civilization sink down in ruins, he does not consider worthy of extended discussion. A provocative book is this —one that would set the dust on fire in Professor Weissnichtwo's seminar.

CHARLES A. BEARD.

New Milford, Conn.

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The Revolt of the Masses. By José Ortega y Gasset. (New York: W. W. Norton and Company. 1932. Pp. 204.)

Our world is sufficiently insecure to welcome revelations, and whenever a book wins applause, it is reasonable to ask if the *Social Contract* or the *Capital* of our era has arrived. The succinct volume by the Spanish philosopher and publicist Ortega has aroused answering echoes in Western Europe and America, and we are justified in searching for an explanation and a prediction of its historical rôle. No doubt the optimism of Ortega breathes reassurance into the nostrils of those who fear that after Spengler comes the deluge. The philosopher radiates robust confidence that the present troubles of the world are due to the demoralization of Europe, but that the creative energies of history will generate a new and stable synthesis. This optimism is particularly welcomed by those who live under sentence of doom from Marx and Engels, for Ortega's social optimism is very different from that of Marx, who sees the coming utopia through the annihilation of the bourgeoisie. The graceful vocabulary of Ortega hovers cryptically over the future, deplores the self-assurance of Marx, and leaves the non-proletarian intellectuals (who write most of the book reviews) able to imagine a future congenial to themselves.

The book wins deference from those surviving liberals who view excessive excitement among the masses with misgivings and resent the ruthlessness of men like Mussolini who see a chance to seize a throne and take it. The title, *The Revolt of the Masses*, has the authentic ring of vituperative diagnosis so potent in propaganda, but it leads nowhere in forming plans of action. The present state of the Western World, at least, resembles the sufferer who has been fluoroscoped, röntgenoscoped, dieted, and diagnosed until the hospital records have a beautiful case history, but who cannot find anybody but a quack who will try to cure him. Ortega excels in diagnosis, but his prescriptions are anti-climactic. He wants a united Europe. He rehearses the panorama of history and buttresses his pages with brilliant interpretative annotations, but he ends with pious wishes for unity, leaving matters of strategy and tactics untouched, his programs unarticulated with the moving currents of the world. This book cannot claim the kind of greatness which arises from able diagnosis joined with perfect candor about its inability to do other than let nature (history) take her course.

Harold D. Lasswell.

University of Chicago.

Beveridge and the Progressive Era. By Claude G. Bowers. (Boston: Houghton Mifflin Company. 1932. Pp. xxiv, 610.)

If all books were as interesting, well-balanced, soundly planned, and well-written as this one, the task of the reviewer would be a pleasure,

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instead of a cause for weariness, as often is the case. Mr. Bowers, while frequently disagreeing with Beveridge the politician, evidently has like views with Beveridge the biographer and historian, that "blood and color and human incident are quite as important in history as dates" (page 8), for in this, as in all his writings, the human touch is never lost.

This story of the life of Albert J. Beveridge is a survey of a fine career of public service, begun in narrow means that necessitated the hard, gruelling process of working one's way through college, intense application to studies, an early vision of oratorical and political fame, and likewise an early realization of success of an unusual character. But also Beveridge was a real product of his times, and his activities and accomplishments coincide closely with the progressivism of the first two decades of the present century that accomplished much for liberalism and promised more, until the breaking out of the World War turned everything upside down and caused an economic and political chaos from which we have not yet emerged.

Beveridge, as Bowers truly says, was "an intense nationalist and centralizationist of the Hamiltonian school . . . but he had phrased a philosophy of conservatism that was rather too rare. Hostility to demagogy meant to many, if not most, subserviency to wealth, an utter indifference to the rights of men for the obligations of power. Beveridge had no more patience with that point of view than with that of the demagogue, and knew that the protection of property and the stability of society rests upon the decent restraint of power. Because he favored a powerful government, he resented the pretensions of great fortunes to immunity from its regulations. This was to remain his idea through life and to involve him in political difficulties in the future" (page 64).

It was with this view-point that Beveridge served his terms in the Senate, made his mark as an able, thoughtful, and independent leader, and willingly went down to defeat at the hands of his stand-pat enemies rather than truckle to what his close friend and leader, Theodore Roosevelt, well named "predatory wealth." He took a prominent part in the formation and campaign of the Progressive party in 1912, on the assurance that the party was to be a permanent institution for coöperation in liberal government and policies. The disintegration of the movement in the years 1915 and 1916 was a great disappointment; nevertheless, he returned to the old Republican party and did his best to infuse that organization with liberalism, in spite of the reactionary leadership of Harding and his intimates. At last he reached a point of disillusionment and discouragement, somewhat of the same type as, as has been hinted by intimate friends, came also to the late Dwight Morrow just before his untimely death. This sense of futility and disappointment in the Senate and

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in public life in general is one of the most discouraging things to be met by every student and teacher of political science today.

Said Beveridge: "Sometimes I feel that public life is not worth the effort when a man gives his best efforts for the passage of righteous laws and then, by the 'ethics' of party regularity, is compelled to go out and work for the very men who were the enemies of these measures" (page 291).

During his last years, Beveridge took refuge in what came to be his great profession and real success, that of historian and biographer. Undoubtedly he shortened his life by overwork, wearing and weakening his vital forces, although it was so thoroughly and enthusiastically enjoyed. His life of John Marshall and his partly completed life of Lincoln were worthy and enduring results of these efforts.

The book contains sharp and authentic pen-portraits of many of the men of the day—Platt of Connecticut, Mark Hanna, George W. Perkins, M. S. Quay, W. H. Taft, and the senior LaFollette, to mention a few. It is a valuable contribution to American history and politics and, from the standpoint of interest, a source of real pleasure to the reader. The errors are few and of a very minor character. Mr. Bowers has advanced far beyond the partisanship that marred much of his former writing, and his fairness and objective standpoint are so marked that any differences in opinion or judgment on the part of the reviewer are of little importance. He deserves congratulations on a piece of work admirably conceived and splendidly executed.

WILLIAM STARR MYERS.

Princeton University.

Money in Elections. By LOUISE OVERACKER. Largely from Material Collected by VICTOR J. WEST. (New York: The Macmillan Company. 1932. Pp. xiv, 476.)

This recent study, which the author states "is largely the work of Victor J. West, formerly professor of political science at Stanford University," is "primarily concerned with the use of money in elections in the United States, the attempts to regulate such use, the operation of these regulations, and the possibility of more effective control." No claim is made that the material is new or that the approach is original, but there is put together within the confines of a 476-page book so much carefully collected and documented data on campaign funds that the author deserves commendation for her thorough and painstaking work.

Miss Overacker has been called upon in this volume to carry out a task which was started by one of the most respected men in the field of political science, and she has faithfully and ably completed his work. The requirements of this particular task have probably prevented the author from

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digging in fields which heretofore have been quite untouched and which still remain unexplored. She does not attempt to treat expenditures made in connection with initiative, referendum, and recall proposals; she leaves untouched the whole area of the Solid South; and she treats only partially the field of the expenditures of candidates as distinct from parties. She has very carefully investigated certain states like Oregon and Massachusetts, but she has not followed the wise suggestion which Professor Sait made a few years ago that what we need is thorough investigations of all the unexplored areas, and not new treatments of warmed-over material.

This is in no way intended to minimize the contribution which Miss Overacker has made. In her valuable analysis of campaign funds contained in Chapter VI, in her excellent analysis of state legislation in Chapters XII and XIII, in the introductory part of the study which deals with the historical development of corrupt practices legislation throughout the world from ancient to modern times, and in the treatment of data disclosed in recent years, she has made useful new contributions to the literature of the subject. But her book is noteworthy for the completeness with which it treats certain phases of the broad field of money in elections, and for its up-to-dateness, rather than for its new contributions.

The care with which the author has prepared her material is evidenced by the paucity of errors. With few exceptions, the mistakes which appear relate to the foreign material, which has not been collected from first-hand investigations, and which contributes little to the general purpose of the book. Criticism of figures of campaign funds might be made. That is, the figures do not always check in different parts of the book, and the method of their compilation is not given in such a way that they may be verified. But the reviewer would be the last person to criticize any one who has honestly and conscientiously tried, as certainly Miss Overacker has done, to present figures of party funds. He knows from hard experience how easy it is to make mistakes because of the unsatisfactoriness of the data.

The appendices, four in number, should be mentioned, for they contain citations to certain foreign laws and to United States laws, election cases in Congress involving charges of the use of money, and a good selected bibliography. The index fails to contain the names of such persons as Gosnell, Grant, Rocca, and Sikes of whom the author makes considerable use, and also fails to list all the references to pages where other sources are used. An unfortunate omission from the bibliography, certainly unintentional, is the testimony on remedial legislation taken by the Nye Committee, a compilation which is one of the most useful collections of fact and opinion to be found anywhere.

The opinions of the author are, however, so generally sound, her pages

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are so full of meat, and her original purpose as set out in the preface has been so well fulfilled, that no amount of critical inspection should becloud the fact that this is a book which definitely enriches the literature of the subject.

JAMES K. POLLOCK.

University of Michigan.

National Regulation of Aëronautics. By CHARLES C. ROHLFING. (Philadelphia: University of Pennsylvania Press. 1931. Pp. ix, 298.)

The purpose of this work, as explained by the author, is "to study the methods employed, the problems met, and the success attained by the Department of Commerce in its attempt to regulate, encourage, and foster the aviation industry, and to present some conclusions as to future regulation." In two introductory chapters, the writer describes briefly the rapid growth of the aëronautic industry, the extent of federal assistance to aviation previous to 1926, and the nature of legislation proposed prior to the passage of the Air Commerce Act. He devotes a third chapter to an examination of the constitutional bases for federal legislation in this field, an analysis of the provisions of the Air Commerce Act, and a description of the organization of the aëronautics branch of the Department of Commerce. The grant to the department of broad regulatory powers, permitting a desirable degree of flexibility in administration, is a feature of the act especially commended, while the narrow limits of compulsory federal jurisdiction over aircraft is considered its most serious defect.

The regulatory activities authorized by the act of 1926 are then described in detail, first from the viewpoint of the organization units charged with their administration, and secondly from the point of view of the various functions involved. Two chapters are devoted to those activities of the department designed to foster and encourage the development of aviation, such as the rating of airports, the promotion of research, the planning and maintenance of airways, and the building up of an adequate weather service. A separate chapter is devoted to a consideration of the several activities of the aëronautics branch, both regulatory and promotive, in relation to the attainment of increased safety—the chief goal of national regulation and promotion of aëronautics. State legislation is examined with a view to ascertaining to what extent it assists or interferes with national regulation, and brief consideration is given to the legal problems resulting from the development of aviation. The author's findings and recommendations for legislative and administrative reform are summarized at the close of each chapter, and further in a concluding chapter. A few of these are: the extension of federal jurisdiction to permit the licensing of all aircraft, pilots, mechanics, and flying school instructors, and the compulsory rating of all flying schools, airports, and landing fields;

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a regionalization of the activities of the aëronautics branch, including the creation of district offices for purposes of licensing as well as inspection, the establishment of engine-testing stations, and the appointment of district flight surgeons to supervise the activities of medical examiners; and the placing of greater emphasis upon the investigation and analysis of aviation accidents. A valuable bibliography, a table of cases cited, and the text of the Air Commerce Act conclude the volume.

Dr. Rohlfing's study is a timely, interesting, and constructively critical description of a new and rapidly developing phase of national administrative activity, and together with the service monograph on the aëronautics branch prepared by Dr. L. F. Schmeckebier, of the Institute for Government Research in 1930, will serve as an admirable guide to persons engaged in the industry, to administrative officers, and to students of administration.

LLOYD M. SHORT.

University of Missouri.

General Sales Taxation: Its History and Development. BY ALFRED D. BUEHLER. (New York: Business Bourse. 1932. Pp. ix, 378.)

Professor Buehler's book gives a brief survey of the development of general sales taxes throughout the world since 1918. The author's second main task is an analysis of the incidence and the effects of such taxes upon business and upon consumers. Most attention is given to the more or less general sales taxes of West Virginia, France, and Germany; to the Canadian manufacturers' sales tax; and to the manufacturers' sales tax proposed but defeated in the Congress of the United States in the spring of 1932. Developments in about twenty-five other states and foreign countries are sketched or mentioned.

Among the outstanding points made are the following. General sales taxes have had a phenomenal growth during the past fifteen years. They are promoted by confused war and post-war conditions, that is, when considerations of equity are subordinated to revenue necessities. Sales taxes, however general, usually provide for many exceptions or exemptions, which tend to increase in number and importance as time passes. It is common for sales-tax laws to favor numerous classes, particularly farmers and laborers. Because of the usual, though not universal, shifting of sales taxes from producers to consumers, such taxes add to the regressiveness of other common consumption and property taxes, unless the masses are exempted, or unless the regressive tendencies are offset by special luxury taxes. But such attempts to offset regressiveness tend to do away with the *general* character of such taxes and largely nullify their main excuse for existence, namely, the production of large revenues. General sales taxes may be more appropriate for states like New York and for the United

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States, which derive a large part of their revenues from the income taxation of the relatively few rich and well-to-do, than for states which depend more exclusively upon other regressive consumption and property taxes.

Though the author is more favorably inclined toward *selected* sales taxes than toward *general* sales taxes, he shows that it is administratively feasible to raise large revenues by means of the latter, and he indicates that he expects them to increase in importance so long as present confused conditions and unbalanced budgets continue. Despite their inequities, sales taxes are not likely to be abandoned quickly when business conditions improve.

This study, which covers a vast amount of material, will enable the student and the general reader to get quickly a good bird's-eye view of a very important subject. One of its most valuable features is its bibliography. The treatise would be even more valuable if it were better organized, if excessive repetition were eliminated, if data were brought more nearly up to date in numerous instances, and if footnotes were more conveniently placed. But criticisms of minor features should not be allowed to overshadow merits of major importance.

ROY G. BLAKEY.

University of Minnesota.

International Law in National Courts; A Study of the Enforcement of International Law in German, Swiss, French, and Belgian Courts. BY RUTH D. MASTERS. (New York: Columbia University Press. 1932. Pp. 245.)

In this excellent study, based on an ample collection of judicial decisions and juristic opinions from the countries studied, the author is concerned with the so-called "dualistic" and "monistic" theories of the internal applications of international law and treaties. The monistic theory holds that there is a rule of international law which renders the international obligations of a state also obligatory upon the individuals and officers of the state. The dualistic theory, on the other hand, regards international law and treaties as imposing obligations only upon the state and not upon its subjects or officers. The dualistic theory recognizes that the state may find itself unable to fulfill its international obligations unless its subjects and officers are bound to act accordingly, but as the latter are only bound by municipal law it becomes the duty of the state in some way to "transform" the international obligation into a rule of municipal law.

The writer finds that the dualistic theory has actually been generally accepted in the four states she discusses, but that these states have tended to effect this transformation by constitutional provision or general rule

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of municipal law. Consequently, in practice, the courts behave much as they would under the monistic theory. The problem has been more discussed in Germany than elsewhere, and Miss Masters gives an illuminating exposition of the views of Trieppel, W. Kaufmann, and others, of the interpretations and discussions of Article 4 of the constitution of 1919, and also of the opinions of the courts.

It appears from this review that Swiss and German courts give a broader recognition to the doctrine of general transformation than do French and Belgian courts. In Switzerland, there even appears to be some doubt whether a later statute would overrule an earlier treaty obligation. In the other countries, the theoretical supremacy of the more recent expression of the national will is recognized, but in fact has little practical effect because of the presumption that the legislature did not intend to violate its international obligations and the consequent opportunity of the court to interpret statutes in that restrictive sense.

With respect to treaties, it is now held in these countries that the legislative participation required by the constitutions has to do with the making of the treaty and that the treaty is not, therefore, binding as an international obligation until these constitutional provisions have been carried out. Transformation into municipal law, however, is effected by promulgation, whether or not the instrument is binding in international law. Here the dualistic theory is exemplified because it is possible for treaties to be enforceable municipal law when they are not binding in international law and, on the other hand, it is possible for treaties internationally binding not to be enforceable as municipal law.

With respect to the interpretation of treaties, French courts have been inclined to look to the political organs, while in Germany and Switzerland the courts themselves will usually construe the instruments. As to customary international law, the courts look to general practice of the states of the world, although they hesitate to accept a rule as one of general international law in the absence of proof that their own country has accepted it.

Miss Masters has made a valuable contribution on a difficult topic, and her work is a useful supplement to the extensive literature in English dealing with the British and American practice on the subject.

QUINCY WRIGHT.

University of Chicago.

De Bismarck à Poincaré; Soixante Ans de Diplomatie Républicaine. By RAYMOND RECOULY. (Paris: Les Éditions de France. 1932. Pp. 548.)

Diplomatic histories must necessarily be written about patriots. But when they are written by and for patriots the results are likely to be less useful as contributions to social science than as exhibits in the vast museum of political neuroses and psychoses. Raymond Recouly's volume—

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one of the series "*La Troisième République de 1870 à nos Jours*" edited by André Billy—is typical of a vast body of political and historical literature which is immensely popular in France. This literature, which has its obvious counterparts in other countries, is designed to enable the narcissistic nationalist to contemplate his own image and that of *la patrie* in a flattering mirror and to wax enthusiastic over what he beholds. Here the patriot finds all of his most sacred symbols and superstitions faithfully reflected and lavishly embellished with poetic language and with a fine pretense of scientific impartiality. M. Recouly has already made numerous contributions of this kind to the delectation of his fellow-citizens. His latest effort neither adds to nor detracts from his previous record as a patriotic propagandist posing as historian and political scientist.

All of the best qualities of French patriotic mythology are here in abundance. The author undertakes to tell the story of French diplomacy from Sedan to Locarno—not as a connected tale, but as a series of episodes, jumping from one large stone to another in crossing the creek, as he says in his preface. The episodes are personalized and dramatized. There are heroes and villains—most of the former west of the Rhine and most of the latter east of it. There are large nouns: Justice, Righteousness, Security, Iniquity, Infamy, and Aggression. There are facts—carefully selected to prove a case—and there are legends and myths presented as facts. There are bibliographies in the appendix—with many books listed which the author has not read or has chosen to ignore. There is no documentation. There is no objectivity, no comprehension of the patterns of Great Power politics, no points of reference for the evaluation of men and events save those supplied by M. Recouly's own patriotic emotionalism. But there are heart-warming eulogies, blood-curdling indictments, soul-stirring sentimentalities—and good, solid bourgeois patriotism laid on heavily like sugar frosting over a cake.

The amazing thing to the foreign observer of things French is that such a book can be published and accepted by the French reading public as an accurate description of diplomacy. Fourteen years after the Armistice, M. Recouly—without batting an eye and without in any way diminishing his prestige in the eyes of the majority of his fellow-countrymen—can present 1914 in the old, familiar guise, can picture the war as hatched in Berlin, can indict Germany and Austria-Hungary as "guilty nations," can ignore the implications of the Russian mobilization, can say nothing about the decision of the French cabinet for war or the falsification of the French Yellow Book at the Quai d'Orsay, can depict "innocent" France ravished by the brutal Prussians, and can present the Treaty of Versailles as being too lenient to the dastardly foe. Whether M. Recouly believes such nonsense is much less important than the fact that almost all of his fellow-patriots believe it without a qualm of doubt. It has become part of

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the French national legend. Like the early church fathers, the French patriot demonstrates his unshakable faith by continuing to believe what is manifestly absurd. The content of this belief is well represented by M. Recouly's amusing book.

FREDERICK L. SCHUMAN.

University of Chicago.

Boycotts and Peace. EDITED BY EVANS CLARK. (New York: Harper and Brothers. 1932. Pp. xx, 381.)

The Causes of War: Economic, Industrial, Racial, Religious, Scientific, and Political. EDITED BY ARTHUR PORRITT (New York: The Macmillan Company. 1932. Pp. xxix, 235.)

Problems of Peace, Sixth Series; Lectures Delivered at the Geneva Institute of International Relations, 1931. BY H. J. LASKI, A. E. ZIMMERN, AND OTHERS. (New York: Oxford University Press. 1932. Pp. xv, 301.)

Three books could scarcely be found to demonstrate more forcibly the wide range of approach which characterizes the current attention to what is broadly called "peace." The first assumes the existence of a body of standards sufficiently accepted and sufficiently certain to warrant police action in their defense. The second examines the areas of human friction with special reference to their mollification. The third varies in quality and standpoint, but discusses some real questions raised by the present régime of the human race attempting to function without having its political machinery blow up under it. The political scientist may be interested in the first two approaches; he can get something out of the third.

Boycotts and Peace is a collective study initiated by the Twentieth Century Fund and competently executed. The job is really done twice in two ways, and it is a matter of judgment which direction the reader selects. The book is a contribution, rather than a conclusion, to the subject. The economic research findings bring together the largest amount of pertinent information as to the operation of embargo and sanction yet collected; they leave much uncertain as to efficacy and methodical efficiency. The political research findings concentrate attention upon the position which the United States would take, or be left in, if sanctions were decided upon by the League of Nations. The report of the Committee on Economic Sanctions precedes these findings, and is not derived from them. Apparently, none of it is based on the economic findings, and the legal and political proposals are definitely passed over. It deals persuasively with the heinousness of "trading with the treaty breaker," with special reference to the Pact of Paris. The committee suggests a supplementary protocol by which parties to it, "in the event of hostilities, actual or threatened," should consult and determine "upon measures of non-intercourse." *Boycotts and Peace* clarifies a part of the problem, but

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still fails to place sanctions in the scheme of things. Some people object to sanctions as a use of "force"; others seem to believe in nothing else. As a matter of fact, a large mechanism, delicate and resourceful, exists to handle problems too hot for the disputants. It gets into motion promptly, unless both parties are equally bent on starting a fracas. The real problem of sanctions is where in that mechanism they should be introduced. The Twentieth Century Fund might continue its work by seeking the answer.

The Causes of War is a series of reports, as indicated by the subtitle, by rapporteurs of Commission No. 1 of the coming World Conference for International Peace through Religion. When the reviewer first looked at the book, he thought it was another of those anthropomorphic products in which special writers were going to argue that war originates in their particular interests. It is not, and no writer claims that his subject is the nucleus of the world's trouble. In the seven chapters, economic, religious, cultural, and political factors are regarded as "causes"; industrial, labor, and racial conditions are regarded as "influences"; while the papers on science and the press discuss their relation to international disturbance. Each essay precisely describes circumstances within its field which create frictions between peoples. A broad sanity lies in these helpful papers, which throughout respond to Sir Arthur Salter's remark: "If explosions are to be prevented, the peoples of the world must work positively and coöperatively at finding a safety valve for the explosive forces, and not merely defensively at national policies designed to direct the explosion elsewhere."

The Problems of Peace preserves, for the sixth time, lectures delivered annually at the Geneva Institute of International Relations. There are now seventy-eight of these papers in volume form, counting in the present twelve. It is only in monographs that the newest features and problems of international relations can be found, until the slower process of book-making digests crowding developments. The best analytical paper in 1931 was on "The Codification of International Law," by John J. Hearne. There were six of quite even merit dealing with "The World Community": "Public Opinion," by Paul Scott Mowrer; "Labor," by George A. Johnston; "Europe," by Alfred E. Zimmern; "Russia," by Sherwood Eddy; "America," by James W. Garner; and "The British Empire," by E. J. Phelan. After an excellent introduction, Paul H. Douglas, in "World Unemployment and its Reduction through International Coöperation," reaches conclusions that can be debated. Henri Rolin constructively views the disarmament problem. Paul Leverkuehn gives a well-ordered account of international financial relations. Robert Redslob is rather light on "The League as a Confederation." Finally, Harold J. Laski has some success in developing "The Theory of an International Society."

DENYS P. MYERS.

World Peace Foundation.

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The New Balance of Power in Europe. By VALENTINE DE BALLA. (Baltimore: The Johns Hopkins Press. 1932. Pp. vii, 205.)

Dr. de Balla's thesis in this book is that the European Powers are being realigned into two groups, i.e., those Powers that want the peace treaties revised and those that want the status quo maintained; that these two groups are "racing to attain military supremacy;" and that the inevitable result of this race will be another great European war. The Revisionist Powers will include Germany, Italy, Austria, Hungary, Bulgaria, Turkey, and probably Russia, with a total military strength of about nine million men without Russia, and from three and a half to twenty million more with Russia, the number depending on the duration of the war. The Status Quo Powers will be France, Poland, Czechoslovakia, Jugoslavia, Rumania, and probably Belgium, with an immediate military strength of twelve million men. The attitude of Great Britain toward such an alignment is very uncertain: "Britain cannot be counted on with either side;" and, anyway, says the author, her military help would not be decisive, since the war will be fought on the Continent and Britain will have to look out for her Dominions. As a result of this war, Germany and Poland will be destroyed; France will be victorious but exhausted; Rumania, Czechoslovakia, and Jugoslavia will probably be beaten; only Russia, "aided by socialist-communist revolts throughout Europe," can be the final winner.

It must be admitted that all of this is entirely possible, and Dr. de Balla's review of conditions in Europe, with policies of the different European Powers and existing diplomatic situations, makes it even seem inevitable. That review is in the main, however, a one-sided and biased interpretation of the material. Thus, the author finds the revisionist movement to be purely defensive (p. 24), while the maintenance of the status quo is by inference aggressive, although he later admits that "no real evidences of territorial appetites are manifested" among the Status Quo Powers (p. 52). He intimates that France would have applied sanctions to Germany for the collection of reparations in 1931 if Hoover had not brought about the moratorium (pp. 21–22). Although he apparently wrote, or completed, the book after the Lausanne Conference, he takes no account of the lifting of the reparations burden by that agency. He proves the existence of a German-Italian-Russian *rapprochement* by citing the Italian plea for German equality and Litvinoff's attack on the French security plan in the Disarmament Conference (pp. 157–158), although he might on the same grounds have proved American, British, and other adherence to the same entente. The friendship of Bulgaria and Turkey for Russia is indicated by their conclusion of commercial and political pacts (p. 160), but the proposal of similar non-aggression and commercial pacts between France and Russia (now actually negotiated and signed) he

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seems to think either sinister or a sham (p. 162 n). There is nothing degrading for France in German hegemony, "if considered in a sound way" (p. 55), but French hegemony is so degrading for Germany that the latter must be expected to fight.

Dr. de Balla does at the end offer another hypothesis, namely, that the European powers might come to their senses, bring about the recovery of Germany, compromise on such problems as Danzig, and engage in active economic if not political coöperation (pp. 183–195). If due account is taken of the growing desire on the part of the French "allies" of Central Europe for a *rapprochement* with Germany (to which the author himself refers, pp. 15, 25, 41–42, 73, 77–78), of the recent halting steps toward German equality, of the several non-aggression pacts with Russia, and of other European developments, there is some reason to suppose that Dr. de Balla might have shifted the upshot of his book to a less tragic conclusion.

University of Illinois. CLARENCE A. BERDAHL.

Diplomatic Relations Between the United States and Japan, 1853–1895. By PAYSON J. TREAT. (Stanford University: Stanford University Press. 1932. Two volumes. Pp. xxi, 1193.)

In the two volumes of this work, Professor Treat continues the undertaking begun in the preparation of his Albert Shaw lectures at Johns Hopkins University, which were published in 1917. *The Early Diplomatic Relations between the United States and Japan, 1853–1865*, which then appeared, is reprinted, with some new references but, apparently, without the use of new archival material and with very little textual revision, as the first eleven chapters and the appendix of the present work. The remaining thirty-three chapters, bringing the narrative through the Peace of Shimonoseki, are drawn principally from the archives of the American Department of State. Professor Treat states in his preface that of 6,513 instructions and dispatches exchanged between the Department and the Tokyo legation between 1855 and 1895, only 841 were printed in any official publication. Since the author has, by his own statement, taken "account of practically everything which became the subject of correspondence between the legation and the State Department" (I, p. vi), his volumes are an encyclopedia for the period for which every student of Far Eastern history will be deeply grateful.

In addition to archival material, the author has used the private papers of a former American minister to Japan, Robert H. Pruyn, and a former consul, Eli T. Sheppard, as well as British blue books, the Asiatic Society of Japan Transactions, and numerous books and articles. The preponderance, however, of instructions and dispatches is what gives the work its character and whatever advantages and disadvantages follow therefrom. The advantages that flow from possession of a digest of diplomatic docu-

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ments are not the advantages of a complete history of Japanese-American relations. Perhaps some readers will regret the absence of attention to materials that compose the matrix of history through which the vein of diplomacy runs. But such regret may not fairly be called unfavorable criticism, since an author's work must be judged in relation to his own plan. For the scholar, the author's determined and consistent effort to do at least a part of the job well requires no justification.

On Professor Treat's own admission, his decision to write in year periods rather than topically was a "choice of evils." That it was the preferable choice, this reviewer feels to be somewhat doubtful. The materials used lend themselves well to a division into periods coinciding with ministerial terms of office; indeed, the author appears to have such a division in mind as he writes. The work suffers considerably from disjointedness; the reviewer is left with the impression that the author has given hardly sufficient consideration to the reader's dependence upon clarity of structure. This is not intended to suggest that anything included should have been excluded. The reviewer also would question the practice of omitting from footnotes such items as initials and dates and places of publication, even when, as is not the case in this work, every title is fully reproduced in the bibliography. On the other hand, the proof-reading has been done meticulously: the reviewer can point to only two misprints, both in the first volume—one on page 489, line eight, where a period is used when a comma is required, and another on page 527, where the word "protagonist" apparently should be "antagonist." Note may also be taken of the use of *tairo* as synonymous with "regent" on page 69 of Volume I, which does not accord with later references (I, pp. 146, 173), to two distinct offices.

For the student of political science, this work is an important source, quite apart from its contribution to history. Upon various aspects of foreign policy control and administration, a great deal of light is thrown. Although Professor Treat deprecates interpreting Commodore Perry's procedure as relying upon threats, the facts, to this reviewer, argue to the contrary (I, pp. 18–20). Subsequently, Commander McDougal, U.S.N., is found making an independent decision to destroy two Choshu naval craft for firing upon an American steamer (I, pp. 184–185), and Commodore Shufeldt is observed addressing himself directly to the king of Korea (II, p. 123). This was hardly "dual diplomacy"—if indeed it was diplomacy at all—but rather coöperative diplomacy in which, under the circumstances of slow communications, the naval officer on the scene held a whip-hand over the secretary of state.

Another interesting feature is the effect of leaving, perforce, the handling of diplomatic procedure to the chief of mission. It seems hardly likely that a secretary of state would suggest to Harris that he advance the

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American cause in Japan by attributing—with whatever truth—Machiavellian designs to European states, particularly Great Britain. It is an interesting speculation what influence the mutual distrust of Harris and Alcock, of Bingham and Parkes, had upon their respective countries' program of coöperation and upon the ultimate breakdown of that program. Save for the determination of both the British and American ministers in Tokyo to "call the tune," there does not appear any substantial reason—other than Japanese nationalistic objections—why the process of treaty-revision should not have continued coöperatively until its purpose was achieved. Professor Treat blames Mr. Swift (minister, 1889–1891) for America's loss of leadership in these negotiations (II, p. 322). But leadership actually was lost when the Japanese-American treaty of 1878, a product of Bingham's non-coöperative policy, failed of effectiveness. Thereafter, the Japanese had no incentive to court American favor, since we were, on the one hand, outside the group of coöperating powers, while, on the other, we were assisting them by refusing to implement our treaty until they had made similar agreements. We had dropped coöperation with our right hand while maintaining a left-hand hold upon it. One might refer to a considerable number of other topics which lend themselves to further study by political scientists.

In a work of this type, particularly one that deals with the Far East, there is always present the problem of how much information upon related topics the author may take for granted. The position of China has been so intimately associated with that of Japan since the middle of the last century that the historian of one can hardly avoid continuous reference to the other. Although Professor Treat has kept China constantly in view, he has not been able to devote sufficient space to explaining his interpretation of her relation to the whole story. Neither in the matter of the respective claims to the Loochoos nor in that of Korea has he, to the reviewer's mind, presented sufficient evidence upon Far Eastern conceptions of suzerainty, conceptions which Japan must have understood though they were inexplicable to ill-informed American ministers in Peking and Seoul. The reviewer believes that this impression, which others may not share with him, may well be laid to limitations of space and materials. But to him, in the presence of those limitations, it would have been preferable to leave moot issues unsettled.

HAROLD S. QUIGLEY.

University of Minnesota.

Japanese Government and Politics: An Introductory Study. BY HAROLD S. QUIGLEY. (New York: The Century Company. 1932. Pp. xii, 442.)

Professor Quigley has made a unique contribution to the study of comparative government by his systematic and comprehensive description of

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the Japanese body politic. There has long been need of such a volume in English, French, or German. Uyehara's *Political Development of Japan* (1910) was published before some of the significant changes in the Japanese polity of the twentieth century had appeared, and before the application of new techniques in political science. McGovern's brilliant and illuminating *Modern Japan* (1920) covers only part of the field of Japanese government and politics. And Oda's *Principes de droit administratif du Japan* (1928) is a constitutional study without regard to political parties and extra-legal institutions and the dynamic forces that receive the attention of the political scientist rather than of the constitutional jurist.

No similar book exists in the Japanese language. Trained in the civil law, Japanese scholars have developed a rich literature in the realm of constitutional and administrative law—the old school of jurisprudence being typified by the writings of Professors Hozumi and Uyesugi and the new school by those of Professor Minobe, all of the Imperial University of Tokyo. But Japanese scholars have not undertaken systematic surveys covering every field of constitutional development, legislation and administration, political parties and public opinion, as attempted by American and English writers. Professor Quigley's book is thus the first comprehensive account of the Japanese government following the mode of the political scientist rather than that of the jurist, and proceeding in the manner of Bryce's *American Commonwealth* and Lowell's *Government of England* rather than the *droit constitutionnel* of the Continental scholar.

Professor Quigley distributes his sixteen chapters over a wide area. Two chapters are devoted to an historical account of the Japanese political system, the opening of Japan to foreign contact, and the reconstruction of the modern state from feudalism. A chapter is given to the constitution of 1889, and another one to citizenship. Then follows an account of the Emperor as an institution, with three chapters on the executive powers and executive agencies, including the cabinet, the privy council, the genro, and the imperial household. The civil service receives considerable attention in a chapter devoted exclusively to this subject. Two chapters set forth the organization and functions of the Diet. A pertinent chapter is occupied with political parties, and another one with elections. The text closes with three chapters on the courts, local government, and the administration of overseas possessions. An appendix of a hundred pages contains documents, including the constitution of 1889, various laws, ordinances, and platforms of political parties. It may appear that the book pays scant attention to local government. But the high degree of centralization of the Japanese administration will explain why the space of the seventeen pages devoted to prefectural and municipal government is perhaps not proportionally too small. It is possible that a comprehensive

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study of Japanese government calls for a discussion of the public school system as a powerful political agency of social control. But Professor Quigley has good precedent for not including a detailed review of this subject in a survey of government.

The author draws some of his material from personal investigation in Japan, from interviews with Japanese statesmen (including the distinguished Viscount Kaneko, Prince Tokugawa, Marquis Komura, Admiral Kato, Viscount Saito, General Ugaki, Ozaki Yukio, and Baron Shidehara), and with jurists and university professors, including Professors Minobe and Royama. On the documentary side, the bulk of his contribution comes from the pages of the *Japan Chronicle* and the *Japan Advertiser*, daily newspapers published in the English language, the one in Kobe, and the other in Tokyo. The *Chronicle*, edited in the best English tradition, unquestionably now is, and will long remain, the chief reservoir of information in English on Japanese political and economic life from the Russo-Japanese war to date. This invaluable journal contains full accounts of political events, translated from the Japanese press; it has reprints of articles from Japanese magazines, translations of the texts of laws and ordinances, and above all else, pertinent excerpts from the stenographic record of the proceedings of the House of Representatives and of the House of Peers.

In view of the large selection of quotations from the Diet debates offered by the *Chronicle*, it would be unjust to criticize Professor Quigley for not using the monumental *Dai Nippon Teikoku Gikaishi* ("Parliamentary Records of Imperial Japan") recently published, or the current numbers of the *Kwampo*, or "Imperial Gazette," or even the many articles on various political questions in the scholarly *Kokka Gakkai Zasshi*, or "Journal of the Social Sciences." As long as the author draws upon the *Chronicle* and the *Advertiser*, he is on firm ground; and, on the basis of these sources, he has given excellent accounts of the machinations of the privy council, the functions of the genro, the process of forming a cabinet, and the struggle between the military and civil arms of government. In discussing some of the constitutional phases, he is not so clear and comprehensive. In a few cases, he has relied upon translations from the *Kempo Seigi*, or "Commentaries on the Constitution," by the renowned Minobe. Hence it is to be regretted that on other occasions he depends for guidance upon such a sketchy account of constitutional law as Iwasaki's *Working Forces in Japanese Politics*, or upon a treatise based on such inadequate Japanese sources as Nakano's *Ordinance Power of the Emperor*. Furthermore, in expounding the Japanese constitution, the best technique probably calls for a presentation of the interpretation of the old school of jurists (Hozumi, Uyesugi, and others) as well as of the new school. This should be done, not for historical edification, but rather

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to indicate the direction and velocity of development in the expansion of the constitution without formal amendment. A few years ago, American scholars were handicapped in making such comparisons, but today the extensive collection of Japanese legal and political works at Northwestern University offers every facility.

In conclusion, Professor Quigley has accomplished a real achievement in his orderly description of the Japanese state. He has performed a useful task in summarizing the English and French literature in this field, and he has introduced his readers to some Japanese sources. The treatise is singularly free from errors, even when treading on controversial ground. An unprejudiced attitude characterizes its every page.

KENNETH COLEGROVE.

Northwestern University.

What's Wrong with China? BY RODNEY GILBERT. (New York: Frederick A. Stokes Company. 1932. Pp. 315.)

China Today: Economic. BY J. B. CONDLIFFE. (Boston: World Peace Foundation. 1932. Pp. 203.)

Nationalism and Education in Modern China. BY CYRUS H. PEAKE. (New York: Columbia University Press. 1932. Pp. xiv, 240.)

In no field of study is it more needful than in that of the Far East for the student to be cognizant of the provenance of his materials. Here the racial, national, educational, and occupational backgrounds of writers, and their experience, profoundly affect the methods of presentation and the conclusions reached. The volumes listed above illustrate clearly the statements made.

Mr. Gilbert went to China some fifteen years ago for business purposes. He travelled fairly widely and came into contact with numerous social groups. Later he entered the field of journalism, where, as a special correspondent and editorial writer, he drew extensively upon his personal experience and observations. His articles in the *North China Daily News* were among the clearest, most analytical, and most critical for about a decade; they form the content of the study under consideration. Mr. Gilbert's attitude is that of the ecumenically minded and "hard boiled" business man. No other American has delivered himself of so unsentimental and scorching a philippic on the subject of China. Far from calling a spade a useful agricultural implement, he, without apology, describes it as a condemnable old shovel. When his "vigorous and searching analysis" (to quote his publishers) was first published in 1926, it created what might mildly be described as a furore: the pot boiled and the boilers gnashed their teeth. Had the book been published by a Chinese house, it

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would have achieved immediate immortality by being enshrined in the Chinese *Index Librorum Prohibitorum*. Entirely undismayed, the author a few years later brought out through the channel of fiction the cleverest satire on Chinese officialdom which has appeared to date.

One wishing to list the weaknesses, shortcomings, and ills of the Chinese people and their rulers from the dawn of history to the present day can do no better than to turn to Mr. Gilbert's catalogue. Under the caption "Illusions," one finds a perfect exhibition of balloon-pricking and learns exactly why the author alone is capable of depicting the Chinese as they "really" are: everyone else has an axe to grind. "The lesson to be drawn from these facts, as we see them," remarks Mr. Gilbert in his conclusion, "is that if we hope to continue to trade in Asia . . . we must sooner or later revolt against the spirit of charity towards China . . . and reimpose discipline by force or a show of force. . . ." One suspects that there have been readers of this work among China's close neighbors in recent years. One should also remark that the complete accuracy of certain sweeping statements to be found in this stimulating volume is not above suspicion; at least there is ground for honest disagreement.

Turning to the authors of the other works listed, we find them to be men of technical academic training who approach their topics with a higher degree of sobriety and less scintillation than does Mr. Gilbert. With detachment, scientific objectivity, lack of heat and personal feeling, they present their materials and, to a considerable degree, permit the reader to draw his own conclusions. Dr. Condliffe was formerly professor of economics at the University of New Zealand, at one time visiting professor of economics at Michigan, later research secretary of the Institute of Pacific Relations, and now is a member of the Secretariat of the League of Nations. Dr. Peake is lecturer in Chinese at Columbia University. Neither has had the first-hand experience with China and its people enjoyed (?) by Mr. Gilbert. Neither writes with his brilliance—which is, perhaps, as well.

Though small in bulk, Dr. Condliffe's pamphlet is broad in scope and accurate in detail. In less than 200 pages, he presents his own and the main conclusions of a small army of specialists, native and foreign, in Chinese economics. He analyzes population pressure, agricultural resources and organization, modern urbanization and industrialization, public finances, banking and currency reform, and foreign trade. Not least in value are eleven statistical tables related to the topics mentioned. As a handy compendium of reference for the apprentice, the journeyman, and the master in the field, Dr. Condliffe's study is of unique value.

Dr. Peake was in China during parts of the years 1928–29 for the purpose of studying and making known to the Western world the history and the present condition of government education. The hypercritical might

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cavil at the title chosen by the author (though possibly his publishers chose it for him), inasmuch as he largely ignores the foundations laid by American and European missionaries for modern— and Nationalistic— education during the nineteenth century, and the superstructures of the twentieth century raised by them, and by private Chinese educators, which have trained in part or in whole so many of contemporary China's shepherds. As a history of the efforts made by Chinese officials and government educators between 1860 and 1929 to modernize the training of the youth of the land, Dr. Peake's study is admirable. Of outstanding worth for purposes of reference is the "Digest of Textbooks Used in the Mass Education Movement" and the "Most Popular Textbooks Used in the Primary and Middle Schools of China from 1905 to 1929," contained in the appendix. This should be studied in connection with page 19 of the Lytton Report. The use of government schools as channels for militaristic and anti-foreign propaganda in an attempt to strengthen the country is fully discussed. Such topics as the carrying into practice of theoretical paper systems of education, and the lack of funds and discipline, with consequent strikes on the part of instructors and students against officialdom—and against each other—are largely omitted. Had the author been in China in 1919 or in 1931, he might have added a valuable analysis of the "modernized" student's function as an official baiter and government destroyer. Like the other two volumes, however, in its field Dr. Peake's carefully prepared study is of more than ephemeral value.

HARLEY FARNSWORTH MACNAIR.

University of Chicago.

L'Évolution de l'Empire Britannique. BY JEAN-JACQUES CHEVALLIER. (Paris: Les Editions Internationales. 1931. Two volumes. Pp. 1068.)

In these ample volumes the author has sought "by an historical, psychological, and juridical description, as exact as possible," to explain the astonishing evolution of the British Empire from 1776, the date of the declaration of the independence of the United States, to 1926, when the equality of the Dominions and Great Britain was proclaimed. The description that he has given is marked by the characteristics of the best French writing: insight, lucidity, unity, and dramatic force. Although the problems of imperial organization as they have arisen in each particular unit of the Empire are traced in some detail, the study of the parts does not blur the picture of the whole, but rather gives it substance and definiteness. It is, indeed, a picture, an interpretation, rather than a mere recital of facts, that is presented. Yet the essential facts are there.

Two of the author's conclusions, presented, respectively, at the beginning and at the end of the book, are of especial interest. The separation

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of the thirteen American colonies, "brutal and irremediable," had in it nothing of the inevitable. Between subordination and separation there was, even in that epoch, a middle course. But British statesmanship, which later revealed such a genius for compromise failed in 1776. In 1929 the problem of "imperial peace" had been solved, for the time being, by the reconciliation of imperial unity with individual institutional liberty. But meanwhile the spirit of national individualism had developed tremendously in India, Ireland, the Dominions, and the whole world. This sentiment has created disruptive forces that threaten the existence of both the British Commonwealth of Nations and the League of Nations at Geneva, organizations whose destinies are inextricably linked together. National individualism, however, is combatted by the unifying and rational forces of internationalism and coöperation that have likewise developed since the World War, and that are now acting through both the League and the Commonwealth. These two organizations need each other. The continued existence of both depends upon the outcome of this world-wide struggle. The issue of the combat is not certain.

Dr. Chevallier, who is professor of international law in the University of Grenoble, has written these volumes, not from the sources, but from a wide variety of secondary material, all of it familiar to students of the British Empire. No specific citations are given, the authors relied upon in each chapter being mentioned at the conclusion thereof. It is not surprising, therefore, that at times the reader feels that the views of some of these writers have been accepted somewhat uncritically. However, the work as a whole is a brilliant study of a vast subject. It will not only contribute greatly to French understanding of British imperial problems, but give to other peoples a vivid view of the great Empire through the clear-seeing eyes of an able Frenchman.

RALSTON HAYDEN.

University of Michigan.

University Training for the National Service. Proceedings of a Conference held at the University of Minnesota, July 14 to 17, 1931. PREFACE BY MORRIS B. LAMBIE. (Minneapolis: University of Minnesota Press. 1932. Pp. viii, 325.)

This report of a conference on university training for the national service will be of value in calling attention to the opportunities now available for college graduates in various branches of the national government, as well as to plans for greater coöperation between universities and the national agencies in this field. The conference included eighty-three persons: thirteen representing the national government (the United States Civil Service Commission, the Departments of Agriculture, Commerce, Justice, and State, and the Tariff Commission); sixty from a score

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of universities and colleges, mostly in the Middle West, but including representatives from California, New Jersey, the Brookings Institution, Alabama, and North Carolina; and ten from local and private organizations and institutions. The papers and discussions are grouped in eight parts, the first dealing with general problems, others with specialized topics such as agriculture, the consular and diplomatic service, law, scientific services, public welfare, economics and statistics, and the concluding section containing general discussions and resolutions presented by special committees and accepted informally by the conference.

More than 18,000 positions in the national civil service are now filled by examinations based on college training, a detailed list showing about 800 different classes of such positions. Much the greater part of these require training in scientific and technical lines—agricultural and biological, engineering, medical, and physical science. About 2,500 positions call for legal training, and about 1,500 are in the economics group and the foreign service. The largest number of positions requiring college training are in the Department of Agriculture (5,500). Other departments with a considerable number of such positions are Commerce (1,800), Interior (1,500) Treasury (1,700), and War (1,250); and in the Veterans Bureau there are 2,400 such positions, more than half in the medical service. In the Post Office Department, only 23 such positions are listed.

Of the papers and briefer discussions, readers of this REVIEW may be especially interested in those by William Anderson, of the University of Minnesota, on "Courses in American Universities Adapted to the National Service;" by DeWitt Clinton Poole, of Princeton University, on "University Training for the Foreign Service;" and discussions by Dean Isidor Loeb of Washington University, Dean F. A. Middlebush of the University of Missouri, Mr. Louis Brownlow of the Public Administration Clearing House, and Professors John M. Gaus of the University of Wisconsin, L. D. White of the University of Chicago, Harvey Walker of Ohio State University, Samuel C. May of the University of California, and S. Gale Lowrie of the University of Cincinnati.

In these and other papers, and in the resolutions, the need for more definite information about government positions requiring college training is stressed, and also the importance of more active coöperation between the universities and the governmental agencies. The opinion is expressed that there is no need for more specialized courses of instruction in narrow fields; and it is indicated that there have been too many specialized courses in some fields, as in courses for the foreign service. But little attention seems to have been given to the question whether the existing examinations are not too specialized, though it is suggested that the foreign service examinations be altered so as to test the intellectual attainment of aspirants. Nor is much, if any, emphasis laid on the impor-

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tance of the general field of public administration, or of means of securing the best men for the higher administrative posts.

As an appendix, there is printed a paper on "Projects of the Council of Personnel Administration Leading to Closer Coördination of Universities and Government," by L. J. O'Rourke, director of the Council, which was read at the annual meeting of the American Political Science Association at Washington, D. C., in December, 1931.

JOHN A. FAIRLIE.

University of Illinois.

Educating for Citizenship. By GEORGE A. COE. (New York: Charles Scribner's Sons. 1932. Pp. xvi, 205.)

Dr. Coe here offers himself as another critic of our educational system, but as a friend of it rather than a fault-finder. He thinks that the efforts thus far made toward citizenship education have been too often either misdirected, half-hearted, or controlled by some undesirable influence—including in occasional undesirable influences even the state itself.

The author grants that the state often seems to wish to teach better things than it actually practices and does not always realize to what extent its own activities represent pressure from selfish interests or wrong ideas of what the state is. He stresses strongly the point that the citizen does not exist for the state, but the state for the citizen. He also lays emphasis on the double function of the state as both sovereign and teacher.

It is always easier to point out defects than to present effective remedies. Dr. Coe does, however, have some constructive suggestions. He urges forcefully that pupils in the school should have some voice as far as their experience warrants in considering, and even determining, the policies of the school. Similarly, teachers should not be merely executors of a policy prescribed from above, but should share in the determination of the policies which they are to execute. "We the people" do everything, both teaching and learning; and all phases of the activity should be cooperative. Propaganda from any source, even the War Department, which undertakes to dictate what shall be taught or believed should be taboo.

Dr. Coe recognizes new trends in the right direction in the teaching of the social studies. These he sees both in the emphasis upon civic functions in the study of government and community life rather than mere machinery or organization, and in the presentation of things as they really were or are in both history and civics. We can go much further, however, in the discussion of present problems in such a way as to present every point of view and lead to uncompelled, individual conclusions. Principals and superintendents who like to feel that all authority emanates from them, and "100 per cent Americans" who wish us to believe that nothing

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ever was or is wrong with existing conditions, will read this thought-provoking discussion with much less pleasure than those who are convinced that we can, and ought to, do much better than we are doing in training our boys and girls both *for* and *in* citizenship.

R. O. HUGHES.

Pittsburgh Public Schools.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

According to its preface, *The Economic Results of Prohibition* (Columbia University Press, pp. 273), by Clark Warburton, was initiated at the request of the Association Against the Prohibition Amendment, and a part of the investigation was financed by that organization, although the major portion of the work was done after the author's connection with the Association terminated. This connection, of course, makes it a fair question whether the study is propaganda, and may justify the reader with dry leanings in discounting some of the rather marked anti-prohibition conclusions. Nevertheless, the author is to be commended for making such a clear and unequivocal statement concerning his connection with the above-named organization. There can be no legitimate objection to propaganda when its source is indicated. On the basis of three separate estimates, i.e., sources of production, death rates, and arrests for drunkenness, the author concludes that the per capita consumption of pure alcohol has been reduced about one third by prohibition; which conclusion varies widely from that of the bureau of prohibition, which is that the consumption of alcohol has been reduced about sixty-five per cent. The author further maintains that the annual liquor bill in 1929 was about the same as it would have been for the same year without prohibition, and in general is of the opinion that there have been, on the whole, few, if any, net economic gains as a result of prohibition. He argues further that the return of the regulated sale of intoxicants, with proper taxation, would yield over a billion dollars in revenue. The author's conclusions are based on a careful statistical study which no one dares to challenge unless armed with similar data. That the margin of error may be very large, Mr. Warburton frankly admits—in some cases amounts may, he says, be twenty-five per cent or more too large or too small. The book is, in fact, mainly a statistical study, as evidenced by the inclusion within its pages of 116 separate but interrelated statistical tables, each well arranged, clearly labelled, and with carefully documented sources. The volume closes with a five-page bibliography.—B. A. ARNESON.

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The Era of the Muckrakers, by C. C. Regier (University of North Carolina Press, pp. 254), presents a composite picture of the varied aspects of muckraking. After a preliminary definition of the term, Professor Regier discusses the aims, social philosophies, and methods of investigation of the leading muckrakers. The rise of the cheap magazine was part and parcel of the movement, for it carried to a wide audience the outcries of Lincoln Steffens, S. S. McClure, Ida M. Tarbell, David Graham Phillips, Ray Stannard Baker, Upton Sinclair, Thomas Lawson, and others. Because of the diversity of the abuses which they attacked in government—federal, state, and local—big business, the church, and the press, the author might have been overwhelmed by the task of assembling and unifying the material. He has been largely successful in demonstrating the common significance of these divergent attacks. His wealth of fact as evidenced by scores of magazine articles and books is organized, not according to the various muckrakers, which would have thrown the emphasis upon their biographies, but according to the subjects they treated. In the concluding chapter, well named "The Balance Sheet," the rise and fall of muckraking as an historical movement is examined with a view to its importance. In tangible reform of government, it was "closely bound up with the progressive movement . . . ." A real service was rendered by "the exposures of the loan sharks, the crooked promoters, and the bucket shops." The author's purpose was to show what light muckraking shed upon the period of American history which it covered—approximately the first decade of the twentieth century His emphasis is on the muckrakers rather than on their era. This book will serve as a comprehensive guide to the literature of muckraking.—A. W. BROMAGE.

The Lake Cargo Coal Rate Controversy (Columbia University Press, pp. 273), by Harvey C. Mansfield, gives a half plus of itself to an authentic review of the quarter-century struggle between the northern and southern operators for control of the Northwest bituminous coal market. Mr. Mansfield has pulled aside the false front of "rates to the lake ports based upon cost of transportation" and penetrated to reality—the life and death struggle of vital sectional interests. Here is the situation today: the Interstate Commerce Commission acting as pacifier; belligerent sections urging the accomplishment of their aims through the "undue preferential" clause upon a divided commission, enmeshed in its own "Ashland rule" and awaiting jurisdiction through judicial pronouncement; persistent operators demanding the inclusion of "commercial conditions" in the concept of "reasonable" rates; sectional interests, failing to secure relief under the law, turning to political methods, executive and legislative. The author sees the possibility of introducing openly the element of

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sectional need or fair share of the market into the "zone of reasonable" rates, but he envisages, and utters warning of, the destruction of the true administrative method by making the Commission a dispenser of social justice as between sections. This last is his real contribution.—J. P. COMER.

In *The War Begins, 1909–1914* (Charles Scribner's Sons, pp. xx, 629), Mark Sullivan continues his *Our Times; The United States, 1900–1925*, of which three volumes have previously been published. Interspersed with lively chapters on the modes and manners of twenty years ago are equally interesting ones devoted to politics and statecraft, especially as relating to Roosevelt's retirement from the presidency, Taft's four years in the White House, and the rise of progressivism. The Roosevelt-Taft feud receives fresh illumination, although one suspects that Mr. Sullivan has not deemed it discreet to tell quite all he knows. As in the preceding volumes, there is a wealth of illustrations, including a number of cartoons of political interest. The title is ill-chosen, since the book stops short at the inauguration of Wilson in 1913.

In a doctoral dissertation entitled *The Rise of Pennsylvania Protectionism* (Published by the author, Philadelphia, pp. 287), Mr. Malcolm R. Eiselen has made a useful, even if not very startling, contribution to the history of the American tariff. The period covered is 1787–1861, with an introductory chapter showing how the state's most illustrious son, Benjamin Franklin, in his riper years "repudiated her favorite creed."

AMERICAN STATE AND LOCAL GOVERNMENT

The Governor of Maryland (Johns Hopkins Press, pp. 175), by Charles James Rohr, presumes to be "a constitutional study of the historical development and present powers of the office of governor" in Maryland. Following a general introductory chapter on the governor's office throughout the states, Professor Rohr traces the evolution of the office of governor in Maryland from colonial times, and discusses its present constitutional position. In large part, the author presents a picture of the governor's powers based upon the wording and judicial interpretation of the constitution. Such a study is undoubtedly worth making, and in general Professor Rohr seems to have done a fairly accurate job, as far as he goes. There are, however, too many omissions, and in many places understanding of existing situations is too inadequate. Insufficient attention is paid to such matters as impeachment (p. 164), the governor's relation to the organization of the general assembly (pp. 144–146), and the use of special messages (pp. 146 ff.). The governor's power over the judiciary is under-estimated (p. 139), including as it does the appointment of all the justices of the peace and of all judges of juvenile, traffic, people's, and

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police courts in Baltimore City. The appointment of the police commissioner of Baltimore City is referred to as a power "in relation to the judiciary" (p. 140). The author's treatment of the administrative reorganization act of 1922 (pp. 124–134) seems lacking in critical analysis, the changes made by that law being, after all, comparatively slight. Other errors of a minor character mar a volume which in general is a useful treatise in the field of state government.—C. I. WINSLOW.

In *Urban Land Uses* (Harvard University Press, pp. xvi, 174), Mr. Harland Bartholomew, a competent and experienced zoning expert, considers zoning practices in relation to economic policy. The general problem is that of how much of a city's area should be zoned for various public and private uses. By his calm and realistic analysis of the actual land uses in twenty-two representative small and medium-sized cities, illustrated by numerous tables and charts, the author dashes buckets of cold water on the visionary real estate promoter who feels that the rush of industries hastening to locate in his city requires the establishment of almost unlimited industrial areas. Why zone a third or a half of a city industrial, when seven per cent of the area more than supplies the average need? In the self-contained cities which he studied, the author found an average of thirty-six per cent of the developed area devoted to single family dwellings, and over forty-seven per cent devoted to streets, parks, playgrounds, and other public and semi-public uses. Let us have more of such objective and factual studies.—WILLIAM ANDERSON.

Maine Towns (pp. 101) is the ninth in a series on the governmental problems of Maine prepared by Professor Orren C. Hormell and published by the Bowdoin College Bureau for Research in Municipal Government. It traces briefly the genesis and development of towns in Maine, describes their governmental organization, and deals at some length with their financial problems and business practices. Despite differences in detail, it is evident that the difficulties of local financing in Maine are much the same as are found in other parts of the country. The book is a small one, but sane and practical, and marked by uncommonly good sense.

FOREIGN GOVERNMENT AND POLITICS

Five years after Professor Edward R. Turner's *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603–1784* was published, a companion volume, *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries, 1622–1784* (Johns Hopkins Press, pp. xix, 480), long awaiting a publisher, has been the light of day. The unfortunate death of the author has in the meantime prevented completion of the additional two volumes planned under the title of *King, Ministers, and Parliament in the Seventeenth and Eighteenth Centuries*, though one volume was so far

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advanced that there is some chance that it will eventually be published. The volume issued in 1927 dealt principally with the privy council in the seventeenth century, and with the beginnings of the cabinet council under the later Stuarts, William and Mary, and Anne. The present volume starts with a chapter of general character reviewing cabinet development, especially as to personnel, from 1717 to 1784, after which follow chapters of more specific nature on cabinet meetings, procedure, functions, activities, and tendencies, with treatment, toward the end, of the rise of an inner group of principal ministers and of the extent to which this group took over the work of the larger one. In the absence of any continuous, formal record of proceedings such as has always been kept for the privy council, and is nowadays kept for the cabinet as well, Professor Turner was obliged to piece together data gathered from occasional rough minutes (in the aggregate, fairly voluminous), and from masses of miscellaneous documents and papers—a task which he performed with prodigious industry and with unchallengeable scholarship and discernment. Especially ingenious is the manner in which he brings to bear upon the nature of the cabinet the rather fully recorded activities of the lords justices as collective regencies functioning at twenty-one different times when the sovereign was absent from the realm. The work closes with an annotated bibliography, which although listing not even all of the sources used by the author, runs to thirty-seven pages.—F. A. O.

"We insist," says Philip G. Cambray, in *The Game of Politics; A Study of the Principles of British Political Strategy* (John Murray, pp. 194), "that those who aspire to command in war be educated in its principles." But though political conflict may, and frequently does, have larger consequences than war, parties do not require the politician to have mastered the principles of political war before being entrusted with command; no party has a "staff college;" what the politician learns of political strategy he must pick up as he may; and "professional politician" remains a term of disparagement. Ex-Premier Baldwin in the House of Commons a year ago said that the only reason why a party is defeated is that the country is sick of it. But how does the country grow thus sick? By what strategy and tactics could it be prevented from doing so? What manipulation of public opinion, and what types of organization and effort in the constituencies, may most hopefully be brought to bear to check the pendulum swing which defeatist political leaders regard as inevitable? Such are some of the queries which Mr. Cambray, long connected with the Conservative central office at London, raises in his introductory chapter before proceeding to his penetrating analysis of political forces, methods, and tactics in England under such headings as "aims and objects of political strategy," "propaganda offensives," "election offen-

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sives," "the value of surprise," "parliamentary influence on political strategy," and the like. The book is no mere manual of instructions for party workers. Neither is it a philosophical disquisition on party phenomena comparable with that of Michels. Packed with practical observations on how political leaders succeed and fail in England, and rich in illustrative incidents, it, however, deserves reading by every person interested in the realities of modern politics.—F. A. O.

Emil Lengyel's *Hitler* (The Dial Press, pp. 256) is as vivid and comprehensive an account of Hitler's career as exists in English. The book produces a decidedly real impression of the man's character and personality, although a comparison with other popular leaders would perhaps have led the author to a kinder judgment. Mr. Lengyel (about whom the publisher ought to have told us a bit more) gives, however, enough attention to the kaleidoscopic changes in post-war Germany to convey an understanding of the more immediate causes which are to blame for the deluge of violent agitation and excitement upon which the career of Hitler has been built. He succeeds well in bringing out the fact that the adherents of the Hitler movement belong mainly to the lower middle classes; but he refrains from any analysis of this fact. Consequently, he does not predict the future place of the National Socialist party in German politics. He is content with stating at the end that a popular orator is not a statesman. "Let sanity return and let Germany see that the end of the world has not yet come, and Hitler will be a national god on half-pension." In short, the book is a first-class reportorial job; the apparent facts are all there. It does not pretend to do more than tell the story of Hitler's rise. This it does very well. Still, an index and an ever so limited bibliographical note indicating the author's sources of information would have increased the value of the book for the more serious student.—C. J. FRIEDRICH.

France and the Colonial Question (Columbia University Press, pp. 254), by Carl Ludwig Lokke, is a well-documented study of French opinion during the latter half of the eighteenth century relative to colonial policy. The first part of the volume "deals with the attacks of reformers on the colonial system inherited from Colbert," while the second "discusses the application of liberal Revolutionary theories to the colonial question from the outbreak of the French Revolution to the evacuation of Egypt in 1801." Although public opinion turned against the Old Colonial System on moral and humanitarian grounds, the desire for extra-European territory none the less persisted. All of which, according to Mr. Lokke, explains the Napoleonic attempt to seize Egypt—a region with an "excellent location on the ancient route to India, a large native population to till the fields and to buy manufactured goods," and "groaning under abuses which the humanitarian French could remedy if they took possession."

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But the enterprise failed and a revival of interest in the West Indies took place. For the student of the history of colonization, the author's balanced interpretation of the interaction of ideas and events in laying the foundation for later French colonial policy should prove especially valuable, even though little new light is thrown upon the subject.—W. R. SHARP.

Number 403 of the World's Classics is *Speeches and Documents on the British Dominions, 1918–1931* (Oxford University Press, pp. xlvii, 501), edited with introduction and notes by Arthur Berriedale Keith. The volume continues two others, previously published in the same series, presenting speeches and documents on British colonial policy from 1763 to 1917, and will prove a very convenient collection of material for students and teachers in the field of British imperial policy and relations. Of five chapters, the first presents speeches and documents on the attainment of international status by the dominions in 1918–19; the second, on the imperial conference of 1921 and the disarmament conference at Washington in 1921–22; the third, on the establishment and constitutional organization of the Irish Free State; the fourth, on the development of internal sovereignty and inter-imperial equality in 1923–31; and the fifth on the external relations and defense of the Empire in the same period. So generously is space allotted to matters of major significance that the Statute of Westminster of 1931, with speeches thereon, receives nearly a hundred pages. Professor Keith's 47-page introduction furnishes a terse summary of "the progress of events" and an authoritative résumé of "the present constitution of the Empire."

Books on India frequently fall into one of two classes: the "tourist" type, with all its unsystematic observations, and the propagandist type, with its arraignment or defense of British policy. Elinor M. Hough's *The Coöperative Movement in India* (P. S. King and Son, pp. xxvii, 340) fortunately does not belong to either group. The author, who originally prepared the study as a doctoral dissertation, has not only mastered a formidable mass of documentary materials, but has spent a year in India studying the problem at first hand. The result is a work of unusual value and objectivity. Dr. Hough is convinced that the coöperative movement is destined to be one of "the constructive forces working for the economic regeneration of India," yet she freely admits that "coöperation in India has not worked the miracle its original sponsors hoped for." In spite of the existence of over one hundred thousand coöperative societies, more than eighty per cent of which are credit organizations, the development of the movement has been retarded seriously by the illiteracy of the interested classes and by unsatisfactory relations with poorly trained government officials. The pamphlet, *Imperial Preference for India*, by D. R. Gadgil (Gokhale Institute of Politics and Economics, Publication No. 2.,

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pp. iv, 66), marshals all relevant facts to demonstrate that it would be economically unsound for India to adopt any system of imperial preference, such as the Ottawa agreement. There is a valuable appendix of Indian foreign trade statistics.—G. L. KIRK.

Julian S. Duncan's *Public and Private Operations of Railways in Brazil* (Columbia University Press, pp. 243) presents the development of the railway system of Brazil and the problems, sectional, financial, and administrative, which are now faced. The early undertakings were by private capital with government subsidy or government guarantee of bond interest. The roads could not be, and were not, expected to be immediate commercial successes, but they opened up the back country to exploitation. Currency inflation later increased the drain of the gold debt services on the treasury. In the beginning of the century, consolidations were carried through and a refunding of government obligations at a lower interest rate. New depreciation of the currency leaves the railways handicapped in most cases through fixed rates. At present, the lines are government, state, and private in operation. Government railroad payrolls are padded, the lines are not highly efficient, and their rates are so low that deficits have to be met from general taxation. Their existence has, however, probably kept lower than otherwise would have been the case the rates charged on the private lines.—C. L. JONES.

A mimeographed report entitled *Some Observations on Municipal Practices in European Cities* (International City Managers' Association, pp. 158), by Donald C. Stone and Alice B. Stone, although purporting to be nothing more than memoranda and rough notes collected during a three-month's trip in 1932, contains first-hand and interesting comment on such matters as executive coördination in British local government, recruitment and training for government service in England, British institutes of public officials, budgeting and financial procedure in English and other European cities, cost accounting, and sundry aspects of housing, police, and street sanitation.

INTERNATIONAL LAW AND RELATIONS

Professor Helen Dwight Reid's *International Servitudes in Law and Practice* (University of Chicago Press, pp. xv, 254) deals with a subject which is not only of importance to statesmen in their efforts to find a solution for some of the conflicts of interest in present international relations. For international servitudes are, as the author convincingly argues, destined to play "an increasingly prominent rôle in modern economic and political life;" and it becomes highly desirable to attempt to clarify the legal foundations upon which the conception of servitudes rests and the varying forms which it takes under different circumstances. After pre-

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liminary chapters discussing the essential elements of an international servitude and distinguishing these more permanent territorial obligations from transient personal ones, the author analyzes the variety of actual servitudes under the separate heads of "distribution," "intercourse," and "security." The first group includes pasturage and timber and mining servitudes; the second, land and waterway construction servitudes, interoceanic, river, land, and air transit servitudes; and the third, "strategic" servitudes relating to intervention, naval stations, and demilitarized zones. In discussing the nature of a servitude, the author emphasizes that if the nations can be made to understand "that servitudes do not derogate from their sovereignty," they may be more ready to submit to such self-imposed restrictions upon their freedom of territorial jurisdiction. This seems to suggest that states may be willing to overlook the reality of a permanent burden upon their territory if only the form of an original free grant can be observed. But whatever the merits of the theory of servitudes as an inducement to submit to actual restrictions upon territorial jurisdiction, there is no doubt that the creation of servitudes not only would solve many existing political problems of international relations, such as the resentment of Bolivia over her loss of access to the sea, but will probably be resorted to more and more as a means of meeting the economic problems of the future, particularly in the field of communications and transit and the exploitation of water power. Professor Reid's study is not only a scholarly piece of work, but also a very careful presentation of the array of precedents which governments find so desirable when they are hesitating to embark upon a line of action for which public opinion is not quite prepared.—C. G. FENWICK.

In his interesting brochure, *The Framework of Grotius' Book De Iure Belli Ac Pacis* (Amsterdam: Uitgave van de N. V. Noord-Hollandsche Uitgeversmaatschappij, pp. 174), Professor C. Van Vollenhoven looks at the handiwork of his illustrious fellow-countryman through the categories of post-war international law and organization. Under such headings as "The Rule of Law in Unorganized Regions," "The Rule of Law as Between Organized States," "Ideas about Organization for the Better Peaceful Maintenance of Binding Duties," and the "Organization of Armed Coercion," the author groups the pertinent quotations from the Carnegie English translation of the *De Iure Belli ac Pacis* of 1925, introduced by his own brief but pithy comments. Footnotes give the Latin of Molhuysen's 1919 edition, affording ready comparison of texts at crucial points. One of the useful indexes lists in order the sections of Grotius' work, followed by the pages on which quotations from these sections may be found. Professor Van Vollenhoven makes it very clear that "the subject-matter of Grotius' book is not [solely] international law in its modern

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meaning," but that it "purposes to explain" all "the law which reigns on earth, so far as this law is not the law of separate states (nations) and of their political subdivisions" (p. 1). Likewise, it is clear that Grotius was concerned with "pure law," apart from the question of enforceability, though the core of the book lies in his treatment of just and unjust wars. On questions of international organization and collective sanctions, Grotius has little to offer. Professor Van Vollenhoven would doubtless be the first to admit that the whole flavor and importance of Grotius' *tour de force* cannot be appreciated apart from a reading of the entire work; but even for specialists, the compendium under review goes far toward answering the question, "What is the precise contribution of Grotius to modern international law?"—L. PFANKUCHEN.

In his *Diplomatic Relations Between the United States and Brazil* (Duke University Press, pp. 316), Lawrence F. Hill deals with the largest American republics, whose connections are, however, only one of the secondary phases of American foreign relations. The material employed is chiefly the diplomatic correspondence in the Department of State at Washington, and other government publications. About one-third of the discussion treats the years 1808–50, a period of friction over minor issues. The acidity of the disputes does not fail to find reflection in the author's characterization of American representatives, the policies of their government, and all activities of Americans, who are regularly referred to as "Yankees." The most valuable contribution is in the half of the book covering the period 1850–90. The best chapters treat the abolition of the slave trade to Brazil and the Paraguayan war. In both, the discussion goes far beyond the title of the book, but is welcome for its new material, and because information easily available in English on the second subject is meager. The operation of the slavers, the cruelty of the treatment of the negroes, and the unsavory record of American ships in the traffic are well portrayed. The review of the political career of the younger Lopez shows him in more favorable light than most previous studies. The last forty years are covered in a summary of as many pages.—C. L. JONES.

George D. Herron and the European Settlement (Stanford University Press, pp. 178), by Mitchell Pirie Briggs, is a detailed examination of the work performed by one of President Wilson's unofficial agents, and reveals much about the methods and effectiveness of such agents. Herron was a Middle Western preacher, professor, pacifist, and socialist; he married Carrie Rand, whose money enabled him to found the Rand School of Social Science and to retire to ten years of intellectual activity in Italy, writing articles and acquiring a broad acquaintanceship. An ardent pro-Ally, he moved to Geneva at the outbreak of the war and soon became actively engaged in diplomacy, being employed on various occasions by

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the Italian and British as well as the American government. His principal service was to the American legation in Berne, to which he furnished information and for which he conducted informal negotiations. These tasks he performed extraordinarily well, carrying on correspondence and conversations with important men, chiefly socialists and former friends, from the various countries, including Germany, Austria, Hungary, and Russia. In this way he probably contributed not a little to the understandings that brought about the armistice. He was an adviser at the Peace Conference, strongly advocated the League of Nations, and, although bitterly disappointed in the Treaty of Versailles, favored its ratification by the United States as the only way to avoid chaos in Europe. The story of Herron's part in these events is a fascinating one, and Dr. Briggs has told it authoritatively and well, basing his account upon the Herron papers and other materials deposited in the Hoover War Library at Stanford University. The book is a genuine contribution to the literature of the war period.—C. A. BERDAHL.

To the ever-swelling literature of the Manchurian controversy has lately been added Dr. Shuhsi Hsu's *Essays on the Manchurian Problem* (Shanghai, China Council of the Institute of Pacific Relations, pp. xxii, 349). The author is professor of political science at Yenching University; and a colleague, Dr. Robert M. Duncan, in a lengthy introduction, bears testimony to his competence to undertake a restatement of China's case. Part I, covering Manchurian developments from 1896 to 1929, was prepared for the Kyoto meeting of the Institute of Pacific Relations in 1929. Part II consists of replies to papers published by two Japanese writers, Matsuoka and Royama, together with a statement of the Far Eastern "dilemma" (force or pacific settlements?), submitted to the Shanghai session of the Institute in 1931. Part III reviews events since September 18, 1931, discusses the validity of the treaties and notes of 1915, and assesses Japan's "rights and position," with a considerable amount of criticism of Dr. C. Walter Young's treatment of the subject in the three volumes which he published somewhat more than a year ago. An appendix is devoted to an enumeration *seriatim* of the "fifty-four cases given out by the Japanese as pending against China," and to comment thereon, in which the author candidly admits that he does not "pretend to achieve the disinterestedness of an inhabitant of Mars"! The volume is *ex parte* throughout, yet more substantial than some that have preceded it.

The nineteenth-century development of nationalistic sentiment among various subject groups in Central Europe was the general problem considered by Henry Wickham Steed in a recent series of lectures before the Graduate Institute of International Studies at Geneva, now published

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under the title of *The Antecedents of Post-War Europe* (Oxford University Press, pp. 123). The problem is so complicated that any attempt to deal with it in a series of lectures is somewhat hazardous. Mr. Steed, however, is on thoroughly familiar ground, and while he says little that is new to the professional student of the background of the World War, he has brought together some valuable material concerning the Southern Slav movement, the influence of Rumania, and the Czech movement in pre-war Austria. The author is convinced that the Magyar leaders who were instrumental in preventing the introduction of liberal reforms in the Dual Monarchy must bear "the heaviest responsibility" for the World War and its consequences.—G. L. KIRK.

India and the League of Nations (pp. 239), by V. Shiva Ram and Brij Mohan Sharma, is a descriptive manual designed for use in Indian high schools and colleges, as well as to educate Indian public opinion regarding the part India has played in the League to date and the increasingly important rôle which the authors believe she should play in the future. The volume concludes with a brief survey of defects in existing League structure and procedure and several suggestions for reform, notably (1) the re-composition of the Council on an inter-continental basis and (2) the transfer of mandate administration to international commissions appointed by the League.—W. R. SHARP.

POLITICAL THEORY AND MISCELLANEOUS

The eighth volume of the *Encyclopaedia of the Social Sciences*, edited by Professor Edwin R. A. Seligman, Alvin Johnson, and others (The Macmillan Co., pp. xxii, 713), brings this important work of reference down to topics having to do with the subject of labor. Among some of the articles of special significance for students of government are those on "Initiative and Referendum," by William B. Munro; "International Law," by Edwin M. Borchard; "International Organization," by Pitman B. Potter; "Interstate Commerce Commission," by I. L. Sharfman; "Judicial Review," by Edward S. Corwin; "Judiciary," by Harold J. Laski; "Jurisprudence," by Roscoe Pound; "Labor Legislation," by Edwin E. Witte; and "Labor Parties," by J. B. S. Hardman, H. N. Brackford, and others. Professor Munro observes that "the use of the initiative and the referendum appears to be slowly but steadily lessening in the United States." Professor Corwin concludes that "the obvious case for judicial review [in the United States] is its tendency to stabilize business conditions nationally by minimizing the disturbing factor of local legislative interference and the opportunity which it occasionally offers for the further clarification and rationalization of public policies. The obvious case against it is its tendency to postpone needed reforms

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beyond the period when they could have been most easily and advantageously articulated with the legal and social structure, and its tendency to frustrate the prompt and effective application of the law, both state and national, to large interests." Mr. Laski favors appointment of judges by the executive for good behavior, with some plan of confirmation, preferably by a special advisory body rather than by the legislature. British experience, in his opinion, teaches the undesirability of appointment by "unfettered discretion of the executive."—A. C. HANFORD.

Dr. Jacques Barzun's monograph on *The French Race; Theories of its Origins and their Social and Political Implications Prior to the Revolution* (Columbia University Press, pp. 276) is a work concerning historiography in France during the last three centuries of the *ancien régime*. His thesis is that "the opposition of Nordic to Latin (Gaul or Roman) has run through French history from the sixteenth century onwards;" that during the sixteenth, seventeenth, and eighteenth centuries "discussion of French origins" was "a guide to contemporary national affairs;" that "respected historians of each century" and "obscure pamphleteers of each party" caused to become "encrusted with multiple Nordic-Latin race-theories" various "historical entities which are still objects of modern study." Such rationalization, of course, is scarcely confined to the writers of any one country or of any one period of history. However, the specific example under consideration is treated, for the centuries chosen, with a thoroughness which is little less than astonishing. The author has with manifest industriousness consulted an enormous amount of material; and he has clearly employed great skill in extracting from this material such parts as are pertinent to his study. Though the resulting essay can hardly be regarded as stylistically very attractive, it may doubtless claim to be a complete and final account of the views which French historians set out during three centuries concerning the origins of their race, as well as of what purposes they caused these views to serve.—R. K. GOOCH.

In *The Grand Social Enterprise; A Study of Jeremy Bentham in his Relation to Liberal Nationalism* (Columbia University Press, pp. 109), it seemingly is the purpose of the author, Dr. Elmer L. Kayser, to suggest that Bentham is important as one of the creators of the nationalist movements of the nineteenth century. Bentham's "works, controversial pamphlets, treatises, and codes were seized upon by a considerable number of active nationalists in the early nineteenth century and became their textbooks and models for legislation. In this way, the utilitarian liberalism of Bentham was joined with romantic nationalism and thus constituted an important factor in the liberal nationalism which was so conspicuous among 'oppressed' peoples in the middle of the nineteenth century. To this type

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of nationalism, Bentham himself could hardly have been averse" (p. 12). Of the five chapters of the study, the first gives a résumé of Bentham's life, the second (entitled "The Liberal Nation") summarizes his ideas concerning government, the third epitomizes his thought concerning public opinion as a factor in government, the fourth contains his ideas concerning international law and relations, and the fifth briefly describes his relations with citizens of states other than Great Britain, and his presumable influence. While nothing of importance is presented that is new, the summaries are convenient. Notes and bibliography send the reader to the *Collected Works* and to the more extensive writings of Halévy, Stephen, Everett, and others. Perhaps some will find the drawing of Bentham by the Virginian, Robert M. Sully, with its striking suggestion of drawings of Franklin, the most original part of the book.—J. M. GAUS.

The day will hardly come when histories of the French Revolution will cease to pour from the presses. Certainly many of the movement's burning issues are still thoroughly alive, being by their very nature contemporary with all modern society and thought. No American scholar has given the Revolution more prolonged and fruitful study than Professor Charles D. Hazen, and it is a pleasure to welcome his new two-volume *The French Revolution* (Henry Holt and Co., pp. vii, 1–518, 519–1078), incorporating portions of his earlier *The French Revolution and Napoleon*, yet a much fuller and altogether more important work. Starting with a half-dozen chapters on the Europe and the France of the pre-revolutionary period,the author carries his animated narrative from the meeting of the States General in 1789 through the *coup d'état* of Brumaire ten years later, pausing for numerous chapters on matters of direct concern to students of government, e.g., the Declaration of the Rights of Man, the reorganization of the government in 1789–90, the reform of the judiciary, the constitution of 1793 and the federalist movement, and the earlier phases of Napoleonic statecraft. The work is not documented extensively, and the bibliography is by design merely selective. But of sound scholarship there is every other and more essential evidence. The book merits the attention of every student of the rise of popular government in Continental Europe.

As set forth in his *The Road to the Law* (McGraw-Hill Co., pp. xiv, 281), Dudley C. Lunt regrets the widening gap between lawyer and client, due to the tendency to make a mystery of legal processes. He thinks, with Dean Pound, that "the traditional technique is the most characteristic element in any system of law," and hence that the first step in the humanizing of his profession lies in giving to the layman an elemental knowledge of the methodology of the common law. The importance of precedent and of reasoning by analogy is cleverly illustrated by weaving a number

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of famous cases into a running discussion of particular problems. The difficulties arising when Pierson shot a fox which was being pursued by Post serves to introduce the subject of the acquisition of title to property. The rôle of local custom is portrayed by the unsuccessful attempt on the part of a litigant to apply the rule of the fox case to a dispute as to the ownership of a whale. Part II, dealing with torts, is particularly well done. The book is remarkably free from the ordinary run of dogmatic assumptions, but unfortunately the technique employed does not lend itself to the orderly presentation of much of the subject-matter.—J. A. C. GRANT.

Mysticism and Democracy in the English Commonwealth (Harvard University Press, pp. xi, 184), by Rufus M. Jones, is based upon the William Belden Noble Lectures given by the author at Harvard in 1930–31. The volume is an admirably planned and developed study in the materials of political theory and the shaping of political institutions, complementing the work of Gooch and others on the political thought of the seventeenth century in England. Dr. Jones describes the rise of religious societies which were self-governing in form and procedure, and which emphasized in their thought the essential values of the individual as a human being, regardless of conventional status. These societies, which included the Baptists, the "Seekers," and others, of whom the Quakers became in some respects most characteristic by the time of the Restoration, through their corporate life and the teachings of their leaders exercised a marked influence on the political thought of the Commonwealth. This is not all; through the American colonists, these ideas and this training in church government contributed to the evolution of American political institutions and ideals. Among the formative influences contributing to this English religious thought and institutional development were the writings of many Continental reformers, some of whom were Anabaptists; while the many direct connections between English Protestants, especially in East Anglia and Lincolnshire, with Holland was important. Dr. Jones notes the significance of the writings of Althusius in this connection, and the timeliness for these movements of the publication of his *Politica Methodice Digesta* in 1603. It is worth recalling that Halévy, in the first volume of his valuable history of Great Britain in the nineteenth century, stresses the importance of the non-conformist and dissenting churches and chapels as centers of self-governing groups which gave stability to the whole state through such training in civic virtues. Dr. Jones' little book reveals directly that process at work in the seventeenth century, and links it to the evolution of American political ideas and institutions.—J. M. GAUS.

Both as a human document and as a chapter of military history, *The Personal Memoirs of Joffre, Field Marshal of the French Army* (2 vols., Harper and Brothers, pp. viii, 1–324, 325–657) is of more than ordinary

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importance. For students of government, it has no particular interest except in two revealing chapters in which the author has paid his respects to the ill effects, as he considered them, of attempts at parliamentary control over military policy (pp. 395–403), defended his attitude in favor of strict censorship of the press (pp. 518–520), and narrated the stormy events, not untinged by politics, leading up to the resignation of his high command in 1916 (pp. 521–562).

Organizations in the Field of Public Administration (Public Administration Clearing House, pp. xi, 203), edited by R. M. Paige, is a directory of 1,744 voluntary organizations—national, state, regional, and Canadian—"working in the general field of public administration or in fields that impinge upon and affect public administration." The organizations are listed alphabetically, and the data given on each relate principally to membership, finances, secretarial staff, activities, and publications. Though admittedly incomplete, in that organizations whose activities are confined to a single city or other local area are generally omitted, the volume should prove a decided convenience to the organizations themselves, to public officials, and to students of government.

The Hussey-Cumberland Mission and American Independence, by Samuel Flagg Bemis (Princeton University Press, pp. vii, 192), a story of the mission of the Irish chaplain of the Spanish embassy in London and a second-rate English dramatist to Spain in 1780, in an effort to bring to a close by a separate peace the war between Spain and England, forms a diplomatic episode which is interesting in its connection with the struggle for American independence. Most of the account is based upon new material, especially a *legajo* of documents recently unearthed by the author in Spain.

Three brief chapters of Wilson Gee's textbook entitled *The Social Economics of Agriculture* (Macmillan Co., pp. x, 696) are devoted to "political problems," i.e., the farmer and government, the tariff and agriculture, and farm taxation. In the author's opinion, farmers will have to enter politics in larger numbers, displacing lawyers and business men in Congress and the state legislatures, before their case will be fully understood and their interests duly served. Doubtful whether the tariff will ever be taken out of politics, he nevertheless surmises that the Smoot-Hawley Act will mark the highest reach of protectionism in this country.

In *Emotional Currents in American History* (Charles Scribner's Sons, pp. xvi, 420), John H. Denison attempts to describe the emotional forces which have made us what we are today. His history is, to say the least, out of date and over-simplified, his psychological observations usually

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trite and not illuminating, and his style a wordy mixture of figures of speech in which the emotional currents are first ocean tides, then zephyrs or tornadoes, and finally electrical charges emanating from spiritual dynamos. The book will not speed the day when the psychological historians will displace the social historians.

The second of the series of reports of the Commission on the Social Studies in the Schools is *An Introduction to the History of the Social Sciences in Schools* (Charles Scribner's Sons, pp. vi, 142), by Henry Johnson, professor of history in Teachers' College, Columbia University. Dealing as it does with subject-matter and methods of instruction from antiquity to the twentieth century, the only "social science" with which the volume really has to do is history. Somewhat greater justification of the title might, however, have been attained by at least some mention of the rise of instruction in civics forty or fifty years ago, meager and crude though it was.

Six titles have recently been added to the Little Lenin Library (International Publishers) as follows: 8. *Letters from Afar* (pp. 48); 9. *The Tasks of the Proletariat in our Revolution* (pp. 48); 10. *The April Conference* (pp. 62); 11. *The Threatening Catastrophe and How to Fight It* (pp. 64); 12. *Will the Bolsheviks Retain State Power?* (pp. 48); 13. *On the Eve of October* (pp. 48). The first four are reprinted from Lenin's *The Revolution of 1917*, and all are convenient and inexpensive, with editorial forewords by Alexander Trachtenberg.

In a *Report of the Radio Committee of the National League of Women Voters for 1931 and 1932* (pp. 31), published by the League at its Washington headquarters, Professor Edward S. Robinson, of Yale University, gives a brief but informing account of an experimental study of the radio as an influence in changes in public opinion, based on the reactions of groups of listeners during the electoral campaign of 1932.

The results of three years of coöperative research are presented in *Recent Social Trends in the United States* (2 vols., pp. 1568), prepared by the President's Research Committee on Social Trends, Professor Wesley C. Mitchell, chairman, and published by the McGraw-Hill Book Company at the beginning of the year. The report will be reviewed at some length in the next issue of the REVIEW.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

Allen, J. S. Negro liberation. (Pamphlet.) N. Y.: Int. Pamphlets.

Anon. Congressional follies. Pp. 128. N. Y.: Abbot Press.

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Barton, Bruce. A parade of the states. Pp. 206. Garden City (N. Y.): Garden City Pub. Co.

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Piburn, J. L. A constitution and a code. Pp. 398. San Diego (Calif.): Author.

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Regier, C. C. The era of the muckrakers. Pp. 265. Chapel Hill (N. C.): Univ. of North Carolina Press.

Riley, F. L., and *Others*. Our republic. Rev. ed. Pp. 616. Evanston (Ill.): Row, Peterson.

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Shull, W. R. Revolution in economic life. Pp. 206. Elgin (Ill.): Elgin Press.

Simonds, F. H. Can America stay at home? Pp. 387. N. Y.: Harper.

Smertenko, J. J. Alexander Hamilton. Pp. 320. N. Y.: Greenberg.

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Government printing office. Documents office. Political science, documents and debates relating to initiative, referendum, elections, prohibition, political parties, District of Columbia—list of publications for sale by superintendent of documents. Washington: Govt. Ptg. Off., 1932. 43 p. (Price list 54, 18th edition.)

Labor department. Women's bureau. Labor laws for women in states and territories, hours, home work, prohibited or regulated occupations, seats, minimum wage; by Florence P. Smith. Washington: Govt. Ptg. Off., 1932. 61 p. (Bulletin 98.)

State department. Arbitration between the United States and Sweden under special agreement of December 17, 1930. The "Kronprinz Gustaf Adolf" and the "Pacific." Statement of case of the United States. With appendices and exhibits. Washington: Govt. Ptg. Off., 1931. 334 p.

———. Answer and argument of the United States. With annexes. Washington: Govt. Ptg. Office, 1932. 549 p.

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———. The answer of the kingdom of Sweden to the case of the United States of America. With an appendix of documents. March 7, 1932. 88 p.

———. The case of the kingdom of Sweden against the United States of America. With a volume of documents. December 30, 1931. 89 p.

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The above six documents, three presenting the case of Sweden, and three the case of the United States in the matter of the "Kronprinz Gustaf Adolf" and the "Pacific," are of interest because of important questions of international law, treaty interpretation, and the freedom of the seas involved. During the World War, the two steamers were detained in an American harbor, resulting in the arbitration.

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STATE AND TERRITORIAL

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Report on a survey of the organization and administration of the state and county governments of Alabama, submitted to Governor H. M. Miller by institute for government research of the Brookings institution, Washington, D. C., 1932. Montgomery, Wilson Ptg. Co., 1932. 5 v.

v. 1, pt. 1. Organization and administration of the state government of Alabama. 442 p.

v. 2, pt. 1. Organization and administration of the state government of Alabama. 383 p.

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v. 4, pt. 3. Taxation of the state government of Alabama. 498 p.

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Tax commissioner. Municipal debt, borrowing capacity, and uncollected property taxes for twenty-eight groups of Connecticut municipalities; by William H. Blodgett. Hartford, 1932. 55 p. (Taxation doc. no. 250.)

NEW YORK

Department of state. Manual for the use of the legislature of the state of New York, 1932. . . Albany, 1932. 1173 p.

Legislature. Second intermediate report. In the matter of the investigation of the departments of the government of the city of New York; pursuant to joint resolutions adopted by the legislature of the state of New York. To Hon. Samuel H. Hofstadter, chairman . . . by Samuel Seabury, counsel. New York, December 19, 1932. 140 p. 10 appendices.

This is the second Seabury report on the administration of the government of New York City. In addition to analyses of the various charges made, it contains recommendations for a new charter as a remedy for certain ills encountered. The first report was issued January 25, 1932, and contained 176 pages and 198 pages of exhibits.

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FOREIGN AND INTERNATIONAL

CHINA

Japan's foreign policy relating to China, by Tanshowa. 46 p.

While this document contains no imprint of any kind, it is included in this list because distributed by the Chinese delegation at Geneva. It discusses the problem under the following general headings: nature of Japan's policy in China; development of Japan's policy in China; policy of economic penetration; policy of political domination; policy of territorial expansion.

GREAT BRITAIN

Foreign office. Imperial economic conference at Ottawa, 1932. Summary of proceedings and copies of trade agreements. London; H.M.S.O., 1932. Appendices.

Reports of committees, statements, addresses.

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Manchukuo. Back to first principles! Address delivered by George Bronson Rea, counsellor to the ministry of foreign affairs of the government of Manchukuo before an assembly in the hall of the Athénée at Geneva, on October 14, 1932. Geneva, Kundig, 1932. 44 p.

JAPAN

Foreign office. Observations on the report of the commission of enquiry, appointed by the resolution of December 10, 1931, of the council of the League of Nations. Tokio, November 21, 1932.

The Japanese reaction to the Lytton report. The same comment appears as League of Nations document, *Official no.:* C. 775.M.366. 1932. VII.

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Secretaria de relaciones exteriores. Un program de politica internacional, por Juan Francisco de Azcarate. Mexico, 1932. 72 p. (Archivo historico diplomatico Mexicano, num. 37.)

NORWAY

Dept. for Handel, sjøfart, industri, . . . Acquisition of sovereignty over polar seas, by Gustav Smedal. Oslo, 1932. 143 p. (Sorifter om svalbard og ishavet nr. 36.)

LEAGUE OF NATIONS

Appeal by the Chinese government. Supplementary documents to the report of the commission of enquiry. Geneva, 1932. 280 p.

This is a supplement to the Lytton report, and contains the preliminary report of April 29, 1932; appendix to the report of the commission of enquiry; special studies by the experts of the commission, for the most part economic in character. *Official no.:* C.663.M.320. 1932. VII. Annexes.

Conference of institutions for the scientific study of international relations. Centers of reference for international affairs. Paris. International institute of intellectual coöperation, 1932. 164 p.

"The present handbook . . . is destined for the use of all those who are interested in international politics . . . The Conference has thought it useful not to confine itself to the issue of a list of the names and addresses of suitable institutions, but rather to publish a handbook giving in respect of each of them a brief description of its object, organization, and activities, together with the names of its officers, its date of foundation, and a few bibliographical details of its principal publications . . . ."

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